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WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

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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.

Rules and Regulations

Federal Register

Vol. 75, No. 204

Friday, October 22, 2010

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2009–0020]

RIN 0579–AD08

Removal of Varietal Restrictions on Apples From Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that allow the importation of Fuji variety apples from Japan to allow all varieties of *Malus domestica* apples into the United States under the same conditions as those for Fuji variety apples. We have determined that the risk associated with allowing other varieties of *M. domestica* apples from Japan into the United States is the same as that posed by Fuji variety apples. This rule allows all varieties of *M. domestica* apples from Japan to be imported into the United States while continuing to protect against the introduction of quarantine pests.

DATES: *Effective Date:* October 22, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The regulations in § 319.56–27 allow the importation of Fuji variety apples from Japan and the Republic of Korea if the apples are cold treated and then fumigated under the supervision of an Animal and Plant Health Inspection Service (APHIS) inspector for the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), and the fruit tree spider mite (*Tetranychus viennensis*), in accordance with 7 CFR part 305. The regulations also provide that the apples must be inspected upon completion of the cold treatment and fumigation, prior to export from Japan or the Republic of Korea, by an APHIS inspector and an inspector from the national plant protection organization (NPPO) of Japan or the Republic of Korea. The regulations also require the NPPO of the exporting country to enter into a trust fund agreement with APHIS in accordance with § 319.56–6 before APHIS will provide the services necessary for Fuji apples to be imported into the United States from Japan or the Republic of Korea.

On March 10, 2010, we published in the **Federal Register** (75 FR 11071–11072, Docket No. APHIS–2009–0020) a proposal[1] to amend the regulations in § 319.56–27 by allowing all varieties of *Malus domestica* apples into the United States from Japan under the same treatment and inspection conditions required for Fuji variety apples from Japan. We prepared a commodity import evaluation document (CIED) as part of our evaluation of Japan's request to allow *M. domestica* varietal apples into the United States. Based on the evidence presented in the CIED, we determined that the measures currently in place for Fuji apples are adequate to manage pest risks associated with all varieties of *M. domestica* apples from Japan.

We solicited comments concerning the proposed rule for 60 days ending May 10, 2010. We received six comments by that date. They were from private citizens and from an association of horticultural producers. Four commenters supported the rule. The other two commenters opposed the proposal to allow the importation of all varieties of *M. domestica* apples into the United States from Japan.

One commenter stated that allowing the importation of additional variety of apples from Japan would be unreasonable since Japan continues to restrict apples and cherries from the United States, requiring separate testing for treatment efficacy for each variety of those fruits without providing scientific evidence to justify their requirement. The commenter stated that the varietal testing requirements constitute a trade barrier and suggested that, if Japan is unwilling to allow additional varieties of apples and cherries to be exported from the United States, then we should not allow additional apple varieties to be imported from Japan.

The second commenter asked why we thought the importation of additional varieties of apples from Japan was necessary. Specifically, the commenter wanted to know whether the demand for apples had increased enough to necessitate the importation of additional apple varieties from Japan, which could increase the potential for importing pests into the United States.

We have evaluated the potential pest risk associated with the importations of additional apple varieties from Japan. Based on our evaluation, we have determined that the measures currently in place for Fuji apples are adequate to manage pest risks associated with all varieties of *M. domestica* apples from Japan. In any case, the mitigations currently in place for Fuji apples are sufficient to mitigate the risk of importing pests into the United States. Therefore, it is appropriate to grant Japan's request to allow the importation of additional apple varieties into the United States.

Any increase in the quantity of apples from Japan because of importation of these other, scarcely grown *M. domestica* varieties is expected to be insignificant. We will continue to work with the NPPO of Japan to resolve technical barriers to exporting U.S. fruits.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made

[1] To view the proposed rule, the CIED, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2009–0020.*

effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for *M. domestic* apple varieties from Japan is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Allowing imports of all varieties of *M. domestica* apples from Japan into the United States is expected to have minimal economic impact on U.S. entities, large or small. Although the Fuji apple is the most common variety grown in Japan, it constituted only 0.1 percent of U.S. apple imports in 2008. Allowing entry of other *M. domestica* varieties is expected to change the quantity of apple imports from Japan only minimally. The wide price differential between apples grown in Japan and in the United States suggests that apples imported from Japan are not a close substitute for the principal U.S.-grown apple varieties.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows all varieties of *M. domestica* apples to be imported into the United States from Japan. State and local laws and regulations regarding the importation of *M. domestica* apples under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–27 is amended as follows:

■ a. By revising the section heading and the introductory text to read as set forth below.

■ b. In paragraphs (b) and (c), by removing the words "Fuji variety" each time they occur.

■ c. In paragraphs (b) and (c), by removing the word "agency" each time it occurs and adding the word "organization" in its place.

§ 319.56–27 Apples From Japan and the Republic of Korea.

Any variety of *Malus domestica* apples may be imported into the United States from Japan, and Fuji variety apples may be imported into the United States from the Republic of Korea, only in accordance with this section and all other applicable provisions of this subpart.

* * * * *

Done in Washington, DC, this 18th day of October 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–26750 Filed 10–21–10; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1203

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1705

RIN 2590–AA29

Equal Access to Justice Act Implementation

AGENCY: Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation that establishes procedures for the submission and consideration of applications for awards of fees and other expenses by prevailing parties in adjudications against FHFA.

DATES: The final regulation is effective November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Janice A. Kullman, Associate General Counsel, telephone (202) 414–8970 (not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) and the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) to establish FHFA as an independent agency of the Federal Government.[1] HERA transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and the Federal Home Loan Banks (collectively, regulated entities), from the Office of Federal Housing Enterprise Oversight

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

(OFHEO) and the Federal Housing Finance Board (FHFB), respectively, to FHFA. FHFA was established to oversee the prudential operations of the regulated entities to ensure that they operate in a safe and sound manner, including being adequately capitalized; and carry out their public policy missions, including fostering liquid, efficient, competitive and resilient national housing finance markets. The regulated entities continue to operate under regulations promulgated by OFHEO and FHFB and such regulations are enforceable by the Director of FHFA until such regulations are modified, terminated, set aside, or superseded by regulations issued by FHFA.[2]

B. Equal Access to Justice Act

The Equal Access to Justice Act, 5 U.S.C. 504, requires that an agency that conducts adversarial adjudications award costs and fees in connection with that adjudication to the prevailing party unless the adjudicative officer of the agency finds that the agency's position was substantially justified or other circumstances make such an award unjust.

II. Proposed Rulemaking and Request for Comments

Because FHFA conducts adversarial adjudications, FHFA proposed and requested comments on a regulation to establish procedures for the submission and consideration of applications for awards of fees and other expenses by prevailing parties as required by the Equal Access to Justice Act. The proposed regulation was published in the **Federal Register** at 75 FR 17622 (April 7, 2010). FHFA received no comments on the proposed regulation.

III. Final Rulemaking

FHFA is publishing as final the proposed Equal Access to Justice Act Implementation regulation. In addition, FHFA is removing the OFHEO Implementation of the Equal Access to Justice Act regulation at 12 CFR part 1705.

IV. Section by Section Analysis

The following is a section-by-section analysis of the regulation.

Subpart A—General Provisions

Section 1203.1 Purpose and Scope

Section 1203.1 provides that the purpose of this regulation is to implement the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for awards of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before FHFA. This section also provides that the purpose of this part is to award fees and other expenses in connection with adversary adjudications before FHFA.

Section 1203.2 Definitions

This section sets forth definitions for the regulation.

Adjudicative officer means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

Adversary adjudication means an administrative proceeding conducted by FHFA under 5 U.S.C. 554 in which the position of FHFA or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under the Safety and Soundness Act, as amended, and any implementing regulations. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will be an issue for resolution in the proceeding on the application for award.

Affiliate means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

Agency counsel means the attorney or attorneys designated by the General Counsel of FHFA to represent FHFA in an adversary adjudication covered by this part.

Demand of FHFA means the express demand of FHFA that led to the adversary adjudication, but does not include a recitation by FHFA of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

Director means the Director of the Federal Housing Finance Agency.

Fees and other expenses includes reasonable attorney or agent fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, test, or expense which the agency finds necessary for the preparation of the eligible party's case.

FHFA means the Federal Housing Finance Agency.

Final disposition date means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

Party means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversarial adjudication.

Position of FHFA means the position taken by FHFA in the adversary adjudication, including the action or failure to act by FHFA upon which the adversary adjudication was based.

Section 1203.3 Eligible Parties

Section 1203.3 sets out the eligibility requirements for parties seeking fees and expenses.

Paragraph (a) of this section requires the applicant to be a party to the adversary adjudication for which it seeks an award and be a small entity as defined in 5 U.S.C. 601. It also requires an applicant to meet all conditions of eligibility set out in this paragraph and comply with all the requirements in subpart B of this part.

Paragraph (b) of this section requires that a party be one of the following:

- An individual who has a net worth of not more than $2 million;
- The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an "individual" rather than the "sole owner of an unincorporated business" if the issues on which the party prevails are related primarily to personal interests rather than to business interests;
- A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;
- A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; or
- Any other partnership, corporation, association, unit of local government, or

[2] *See* sections 1302 and 1312 of HERA.

organization that has a net worth of not more than $7 million and not more than 500 employees.

Paragraph (c) of this section clarifies the requirements for eligibility by requiring that:

- The employees of a party must include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees must be included on a proportional basis.
- The net worth and number of employees of the party and its affiliates must be aggregated to determine eligibility.
- The net worth and number of employees of a party will be determined as of the date the underlying adversary adjudication was initiated.
- A party that participates in an adversarial adjudication primarily on behalf of one or more entities that would be ineligible for an award is not itself eligible for an award.

Section 1203.4 Standards for Awards

Section 1203.4 sets out the standards for the award of fees and expenses.

Paragraph (a) of this section provides that an eligible party that files an application for award of fees and other expenses in accordance with this part will receive an award of fees and other expenses related to defending against a demand of FHFA if the demand was in excess of the decision in the underlying adversary adjudication and was unreasonable when compared with the decision under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust. This paragraph also explains that the burden of proof that the demand of FHFA was substantially in excess of the decision and is unreasonable when compared with the decision is on the eligible party.

Paragraph (b) of this section provides that an eligible party that submits an application for award in accordance with this part will receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the position of FHFA in the adversary adjudication was substantially justified or special circumstances make an award unjust. This paragraph further explains that FHFA has the burden of proof to show that its position was substantially justified and could do so by showing that its position was reasonable in law and in fact.

Section 1203.5 Allowable Fees and Expenses

Section 1203.5 sets forth what fees and expenses a party may collect under this part.

Paragraph (a) of this section provides that awards of fees and other expenses are based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. This paragraph also explains that, except as provided in § 1203.6, an award for the fee of an attorney or agent can not exceed $125 per hour and an award to compensate an expert witness can not exceed the highest rate at which FHFA pays expert witnesses. However, under this paragraph, an award can also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

Paragraph (b) of this section sets out the factors the adjudicative officer must consider for determining the reasonableness of the fee, including the following:

- If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;
- The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;
- The time actually spent in the representation of the eligible party;
- The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and
- Such other factors as may bear on the value of the services provided.

Paragraph (c) of this section provides that in determining the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party, the adjudicative officer will consider the prevailing rate for similar services in the community in which the services were performed.

Paragraph (d) of this section provides that fees and other expenses incurred before the date on which an adversarial adjudication was initiated will be awarded only if the eligible party can demonstrate that they were reasonably incurred in preparation for the adversary adjudication.

Section 1203.6 Rulemaking on Maximum Rate for Fees

Section 1203.6 provides that FHFA can adopt regulations providing for an award of attorney or agent fees at a rate higher than $125 per hour in adversary adjudications covered by this part if warranted by an increase in the cost of living or by special circumstances. Special circumstances include the limited availability of attorneys or agents who are qualified to handle certain types of adversary adjudications. This section provides that FHFA can conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553.

Section 1203.7 Awards Against Other Agencies

Section 1203.7 provides that if another agency of the United States participates in an adversarial adjudication before FHFA and takes a position that was not substantially justified, the award or appropriate portion of the award to an eligible party that prevailed over that agency will be made against that agency.

Subpart B—Information Required From Applicants

Section 1203.10 Contents of the Application for Award

Section 1203.10 provides, under paragraph (a) of this section, that an application for award of fees and other expenses under either § 1203.4(a) or § 1203.4(b) will have to:

- Identify the applicant and the adversary adjudication for which an award is sought;
- State the amount of fees and other expenses for which an award is sought;
- Provide the statements and documentation required by paragraph (b) or (c) of this section and § 1203.12 and any additional information required by the adjudicative officer; and
- Be signed by the applicant or an authorized officer or attorney of the applicant and contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

Paragraph (b) of this section requires that an application for award under § 1203.4(a), must show that the demand of FHFA was substantially in excess of, and was unreasonable when compared to, the decision in the underlying adversary adjudication under the facts and circumstances of the case. This paragraph also requires the application to show that the applicant is a small entity as defined in 5 U.S.C. 601.

Paragraph (c) of this section sets out the requirements for an application for award under § 1203.4(b) including that the application must:

• Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of FHFA in the adversary adjudication that the applicant alleges was not substantially justified;

• State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);

• State that the net worth of the applicant does not exceed $2 million, if the applicant is an individual; or for all other applicants, state that the net worth of the applicant and its affiliates, if any, does not exceed $7 million; and

• Include one of the following:

—A detailed exhibit showing the net worth (net worth exhibit) of the applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to determine whether the applicant qualifies as an eligible party;

—A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

—A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

Section 1203.11 Confidentiality of Net Worth Exhibit

Section 1203.11 states that unless otherwise ordered by the Director, or required by law, the statement of net worth will be for the confidential use of the adjudicative officer, the Director and agency counsel.

Section 1203.12 Documentation for Fees and Expenses

Section 1203.12 provides the requirements for documenting fees and expenses.

Paragraph (a) of this section requires that the application for award must be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. This paragraph further provides that the adjudicative officer could require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

Paragraph (b) of this section requires that a separate itemized statement be submitted for each entity or individual whose services are covered by the application and that each itemized statement must include:

• The hours spent by each entity or individual;

• A description of the specific services performed and the rates at which each fee has been computed; and

• Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity.

Subpart C—Procedures for Filing and Consideration of the Application for Award

Section 1203.20 Filing and Service of the Application for Award and Related Papers

Section 1203.20 sets out the procedures for filing and service of an application for award.

Paragraph (a) of this section requires that an application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

Paragraph (b) of this section requires that an application for award and other papers related to the proceedings on the application for award must be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

Paragraph (c) of this section requires that the computation of time for filing and service of the application of award and other papers must be computed in the same manner as in the underlying adversary adjudication.

Section 1203.21 Response to the Application for Award

Section 1203.21 sets out the procedure for responding to the application for an award.

Paragraph (a) of this section requires that agency counsel file a response within 30 days after service of an application for award of fees and other expenses except as provided in paragraphs (b) and (c) of this section. This paragraph also requires that agency counsel explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel must include with the response either supporting affidavits or a request for further proceedings under § 1203.25.

Paragraph (b) of this section provides that if agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement extends the time for filing a response for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer could grant for good cause further time extensions.

Paragraph (c) of this section provides that agency counsel may request that the adjudicative officer extend the time period for filing a response. This paragraph further provides that if agency counsel does not respond or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

Section 1203.22 Reply to the Response

Section 1203.22 provides that within 15 days after service of a response, the applicant may file a reply. This section further provides that if the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant must include with the reply either supporting affidavits or a request for further proceedings under § 1203.25.

Section 1203.23 Comments by Other Parties

Section 1203.23 provides that any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on a response within 15 calendar days after it is served. This section also provides that a commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

Section 1203.24 Settlement

Section 1203.24 provides that the applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversarial adjudication has been concluded. This section further requires that if the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application must be filed with the proposed settlement.

Section 1203.25 Further Proceedings on the Application for Award

Section 1203.25 sets forth procedures for further proceedings of an application for award.

Paragraph (a) of this section provides that on request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director of FHFA under § 1203.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. This paragraph further provides that such additional proceedings will be held only when necessary for full and fair resolution of the issues arising from the application for award and will be conducted as promptly as possible. Last, this paragraph requires that the issue as to whether the position of FHFA in the underlying adversary adjudication was substantially justified must be determined based on the whole administrative record that was made in the underlying adversary adjudication.

Paragraph (b) of this section requires that a request that the adjudicative officer order further proceedings under this section must specifically identify the information sought on the disputed issues and must explain why the additional proceedings are necessary to resolve the issues.

Section 1203.26 Decision of the Adjudicative Officer

Section 1203.26 sets forth the requirements for the decision of the adjudicative officer.

Paragraph (a) of this section provides that the adjudicative officer must make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1203.25.

Paragraph (b) of this section provides that the adjudicative officer must issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. This paragraph provides that the initial decision becomes the final decision of FHFA after 30 days from the day it was issued, unless review is ordered under § 1203.27.

Paragraph (c) of this section provides that in all initial decisions, the adjudicative officer must include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. This paragraph also provides that if the applicant has sought an award against more than one agency, the adjudicative officer must also include findings and conclusions with respect to the allocation of payment of any award made.

Paragraph (d) of this section provides that in initial decisions on applications filed pursuant to § 1203.4(a), the adjudicative officer must include findings and conclusions as to whether FHFA made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

Paragraph (e) of this section provides that in decisions on applications filed pursuant to § 1203.4(b), the adjudicative officer must include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of FHFA was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

Section 1203.27 Review by FHFA

Section 1203.27 provides that within 30 days after the adjudicative officer issues an initial decision under § 1203.26, either the applicant or agency counsel may request the Director to review the initial decision of the adjudicative officer. This section also provides that the Director or his or her designee may also decide, on his or her own initiative, to review the initial decision. Under this section, whether to review a decision is at the discretion of the Director or his or her designee. If review is ordered, the Director or his or her designee would issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under § 1203.25.

Section 1203.28 Judicial Review

Section 1203.28 provides that any party, other than the United States, that is dissatisfied with the final decision on an application for award of fees and expenses under this part could seek judicial review as provided in 5 U.S.C. 504(c)(2).

Section 1203.29 Payment of Award

Section 1203.29 provides that to receive payment of an award of fees and other expenses granted under this part, the applicant must submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the decision in the United States courts to the Director, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. Under this section, FHFA must pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has already been sought by any party to the proceedings.

Regulatory Impacts

Paperwork Reduction Act

The regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

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 does 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 regulation under the Regulatory Flexibility Act and certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities. The regulation is applicable only to parties who have prevailed in adjudication against FHFA. These parties will not represent a substantial number of small business entities.

List of Subjects in 12 CFR Parts 1203 and 1705

Administrative practice and procedure, Equal access to justice.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4526 and 5 U.S.C. 504, FHFA amends Chapters XII and XVII of Title 12 of the Code of Federal Regulations, as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

■ 1. Add part 1203 to Subchapter A to read as follows:

PART 1203—EQUAL ACCESS TO JUSTICE ACT

Authority: 12 U.S.C. 4526, 5 U.S.C. 504.

Subpart A—General Provisions

§ 1203.1 Purpose and scope.

(a) This part implements the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for awards of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before FHFA.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before FHFA. However, if a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 1203.2 Definitions.

As used in this part:

Adjudicative officer means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

Adversary adjudication means an administrative proceeding conducted by FHFA under 5 U.S.C. 554 in which the position of FHFA or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under the Safety and Soundness Act, as amended, and any implementing regulations. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will be an issue for resolution in the proceeding on the application for award.

Affiliate means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

Agency counsel means the attorney or attorneys designated by the General Counsel of FHFA to represent FHFA in an adversary adjudication covered by this part.

Demand of FHFA means the express demand of FHFA that led to the adversary adjudication, but does not include a recitation by FHFA of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

Director means the Director of the Federal Housing Finance Agency.

Fees and other expenses means reasonable attorney or agent fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, or test, which the agency finds necessary for the preparation of the eligible party's case.

FHFA means the Federal Housing Finance Agency.

Final disposition date means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

Party means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversary adjudication.

Position of FHFA means the position taken by FHFA in the adversary adjudication, including the action or failure to act by FHFA upon which the adversary adjudication was based.

§ 1203.3 Eligible parties.

(a) To be eligible for an award of fees and other expenses under the Equal Access to Justice Act, the applicant must show that it meets all conditions of eligibility set out in this paragraph and has complied with all the requirements in Subpart B of this part. The applicant must also be a party to the adversary adjudication for which it seeks an award.

(b) To be eligible for an award of fees and other expenses for prevailing parties, a party must be one of the following:

(1) An individual who has a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an "individual" rather than the "sole owner of an unincorporated business" if the issues on which the party prevails are related primarily to personal interests rather than to business interests;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization that has a

net worth of not more than $7 million and not more than 500 employees; or

(6) For the purposes of an application filed pursuant to 5 U.S.C. 504(a)(4), a small entity as defined in 5 U.S.C. 601.

(c) For purposes of eligibility under this section:

(1) The employees of a party must include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees must be included on a proportional basis.

(2) The net worth and number of employees of the party and its affiliates must be aggregated to determine eligibility.

(3) The net worth and number of employees of a party will be determined as of the date the underlying adversary adjudication was initiated.

(4) A party that participates in an adversary adjudication primarily on behalf of one or more entities that would be ineligible for an award is not itself eligible for an award.

§ 1203.4 Standards for awards.

(a) An eligible party that files an application for award of fees and other expenses in accordance with this part will receive an award of fees and other expenses related to defending against a demand of FHFA if the demand was in excess of the decision in the underlying adversary adjudication and was unreasonable when compared with the decision under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust. The burden of proof that the demand of FHFA was substantially in excess of the decision and is unreasonable when compared with the decision is on the eligible party.

(b) An eligible party that submits an application for award in accordance with this part will receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the position of FHFA in the adversary adjudication was substantially justified or special circumstances make an award unjust. FHFA has the burden of proof to show that its position was substantially justified and may do so by showing that its position was reasonable in law and in fact.

§ 1203.5 Allowable fees and expenses.

(a) Awards of fees and other expenses will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in § 1203.6, an award for the fee of an attorney or agent may not exceed $125 per hour and an award to compensate an expert witness may not exceed the highest rate at which FHFA pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer will consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(c) In determining the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party, the adjudicative officer will consider the prevailing rate for similar services in the community in which the services were performed.

(d) Fees and other expenses incurred before the date on which an adversary adjudication was initiated will be awarded only if the eligible party can demonstrate that they were reasonably incurred in preparation for the adversary adjudication.

§ 1203.6 Rulemaking on maximum rate for fees.

If warranted by an increase in the cost of living or by special circumstances, FHFA may adopt regulations providing for an award of attorney or agent fees at a rate higher than $125 per hour in adversary adjudications covered by this part. Special circumstances include the limited availability of attorneys or agents who are qualified to handle certain types of adversary adjudications. FHFA will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553.

§ 1203.7 Awards against other agencies.

If another agency of the United States participates in an adversary adjudication before FHFA and takes a position that was not substantially justified, the award or appropriate portion of the award to an eligible party that prevailed over that agency will be made against that agency.

§§ 1203.8–1203.9 [Reserved]

Subpart B—Information Required From Applicants

§ 1203.10 Contents of the application for award.

(a) An application for award of fees and other expenses under either § 1203.4(a) and § 1203.4(b) must:

(1) Identify the applicant and the adversary adjudication for which an award is sought;

(2) State the amount of fees and other expenses for which an award is sought;

(3) Provide the statements and documentation required by paragraph (b) or (c) of this section and § 1203.12 and any additional information required by the adjudicative officer; and

(4) Be signed by the applicant or an authorized officer or attorney of the applicant and contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) An application for award under § 1203.4(a) must show that the demand of FHFA was substantially in excess of, and was unreasonable when compared to, the decision in the underlying adversary adjudication under the facts and circumstances of the case. It must also show that the applicant is a small entity as defined in 5 U.S.C. 601.

(c) An application for award under § 1203.4(b) must:

(1) Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of FHFA in the adversary adjudication that the applicant alleges was not substantially justified;

(2) State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);

(3) State that the net worth of the applicant does not exceed $2 million, if the applicant is an individual; or for all other applicants, state that the net worth of the applicant and its affiliates, if any, does not exceed $7 million; and

(4) Include one of the following:

(i) A detailed exhibit showing the net worth (net worth exhibit) of the applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to determine whether the applicant qualifies as an eligible party;

(ii) A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

(iii) A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

§ 1203.11 Confidentiality of net worth exhibit.

Unless otherwise ordered by the Director, or required by law, the statement of net worth will be for the confidential use of the adjudicative officer, the Director, and agency counsel.

§ 1203.12 Documentation for fees and expenses.

(a) The application for award must be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement must be submitted for each entity or individual whose services are covered by the application. Each itemized statement must include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity.

§§ 1203.13–1203.19 [Reserved]

Subpart C—Procedures for Filing and Consideration of the Application for Award

§ 1203.20 Filing and service of the application for award and related papers.

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award must be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers must be computed in the same manner as in the underlying adversary adjudication.

§ 1203.21 Response to the application for award.

(a) Agency counsel must file a response within 30 days after service of an application for award of fees and other expenses except as provided in paragraphs (b) and (c) of this section. In the response, agency counsel must explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel must include with the response either supporting affidavits or a request for further proceedings under § 1203.25.

(b) If agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement will extend the time for filing a response for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing a response. If agency counsel does not respond or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

§ 1203.22 Reply to the response.

Within 15 days after service of a response, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant must include with the reply either supporting affidavits or a request for further proceedings under § 1203.25.

§ 1203.23 Comments by other parties.

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on a response within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1203.24 Settlement.

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application must be filed with the proposed settlement.

§ 1203.25 Further proceedings on the application for award.

(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director under § 1203.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application for award and will be conducted as promptly as possible. The issue as to whether the position of FHFA in the underlying adversary adjudication was substantially justified will be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section must specifically identify the information sought on the disputed issues and must explain why the additional proceedings are necessary to resolve the issues.

§ 1203.26 Decision of the adjudicative officer.

(a) The adjudicative officer must make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1203.25.

(b) The adjudicative officer must issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision will become the final decision of FHFA after 30 days from the day it was issued, unless review is ordered under § 1203.27.

(c) In all initial decisions, the adjudicative officer must include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer must also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to § 1203.4(a), the adjudicative officer must include findings and conclusions as to whether FHFA made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to § 1203.4(b), the adjudicative officer must include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of FHFA was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

§ 1203.27 Review by FHFA.

Within 30 days after the adjudicative officer issues an initial decision under § 1203.26, either the applicant or agency counsel may request the Director to review the initial decision of the adjudicative officer. The Director may also decide, at his or her discretion, to review the initial decision. If review is ordered, the Director must issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under § 1203.25.

§ 1203.28 Judicial review.

Any party, other than the United States, that is dissatisfied with the final decision on an application for award of fees and expenses under this part may seek judicial review as provided in 5 U.S.C. 504(c)(2).

§ 1203.29 Payment of award.

To receive payment of an award of fees and other expenses granted under this part, the applicant must submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the decision in the United States courts to the Director, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. FHFA must pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has been sought by any party to the proceedings.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 1705—[REMOVED]

■ 2. Remove part 1705.

Dated: October 14, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–26650 Filed 10–21–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0611; Directorate Identifier 2009–SW–18–AD; Amendment 39–16487; AD 2010–22–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 350 B, BA, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the Eurocopter France Model AS 350 B, BA, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N helicopters, with certain main rotor servo-controls and tail rotor servo-controls. This AD requires replacing all servo-controls that are identified in the Applicability section of this AD. This AD is prompted by an internal review conducted by the manufacturer which revealed that some main and tail rotor servo-controls do not conform to the approved design. The actions specified by this AD are intended to prevent the distributor slide valve jamming in its sleeve, leading to reduced controllability of the rotors and subsequent loss of control of the helicopter.

DATES: Effective November 26, 2010.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. R. Holton, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–4964, fax (817) 222–5961.

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 Eurocopter France Model AS 350 B, BA, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N helicopters on June 9, 2010. That NPRM was published in the **Federal Register** on June 16, 2010 (75 FR 34062). That NPRM proposed to require replacing all servo-controls that are identified in the Applicability section of the proposed AD. The NPRM was prompted by an internal review conducted by the manufacturer which revealed that some main and tail rotor servo-controls do not conform to the approved design. The actions specified by the NPRM are intended to prevent the distributor slide valve jamming in its sleeve, leading to reduced controllability of the rotors and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No. 2007–0141–E, dated May 21, 2007, to correct an unsafe condition for certain Eurocopter France Model AS 350 B, BA, BB, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N helicopters. EASA advises that "an internal review revealed that some main and tail rotor servo-controls do not conform to the approved design. This results in a greater play in the input lever bearing which could lead to off-centered lever/distributor slide valve. If not corrected, this condition could jam the distributor slide valve in its sleeve, contributing to reduced controllability of the rotors."

Related Service Information

Eurocopter has issued Emergency Alert Service Bulletin (EASB) No. 01.00.58, applicable to Model AS 350 B, BA, BB, B1, B2, B3, and D helicopters, and EASB No. 01.00.53, applicable to Model AS355 E, F, F1, F2, and N helicopters, both Revision 1 and both dated April 19, 2007, "to preclude the risk of jamming of the distributor slide valve in its sleeve, due to excessive play in the bearing of the servo-control input lever." Both EASB 01.00.58 and 01.00.53, along with 01.00.22 and 01.00.23 for various military model helicopters are contained in the same EASB document. The EASA classified these EASBs as mandatory and issued EASA Emergency AD No. 2007–0141–E, dated May 21, 2007, to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs. This AD requires replacing all servo-controls with serial numbers that are in the Applicability section of this AD.

Differences Between This AD and the EASA AD

This AD does not require returning servo-controls to the manufacturer for return to conformity. This AD does not require inspecting for the existence of "hard points" in the flight controls since this is accomplished during normal pre-flight run-up control checks.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed, with one minor correction. Note 1 of the NPRM did not contain the revision level and dates of the EASB; this AD corrects that oversight. We have determined that this change neither increases the economic burden on any operator nor increases the scope of the AD.

Costs of Compliance

We estimate that this AD will affect about 56 helicopters of U.S. registry. We also estimate that it will take about 1.5 work-hours per helicopter to replace a servo-control identified in the Applicability section of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $16,500 per helicopter. Based on these figures, we estimate that the cost of this AD on U.S. operators is $931,140 for the entire fleet, or $16,628 per helicopter.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2010–22–08 Eurocopter France: Amendment 39–16487; Docket No. FAA–2010–0611; Directorate Identifier 2009–SW–18–AD.

Applicability: Model AS 350 B, BA, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N helicopters, with a main rotor or tail rotor servo-control identified in Table 1, installed, certificated in any category.

TABLE 1

Component	Part No. (P/N)	Serial No. (S/N)
Main rotor servo-control	P/N SC5083	S/N 270M, 272M, 409M, 423M, 452M, or 1573.

TABLE 1—Continued

Component	Part No. (P/N)	Serial No. (S/N)
	P/N SC5083–1	S/N 2902 through 2921, inclusive.
	P/N 5084	S/N 30, 84, 104, 186, 438, 575, or 695.
	P/N 5084–1	S/N 1462 through 1481, inclusive.
Tail rotor servo-control	P/N SC5072	S/N 222M, 306M, or 309.

Compliance: Required, as indicated.

To prevent the distributor slide valve jamming in its sleeve, leading to reduced controllability of the rotors and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), or when a "hard point" is detected in the flight controls, whichever occurs earlier, replace each installed servo control that has a serial number listed in Table 1 of this AD, with an airworthy servo control.

Note 1: Eurocopter EASB No. 01.00.58 and No. 01.00.53, both Revision 1, and dated April 19, 2007, which are not incorporated by reference, contain additional information about the subject of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: J. R. Holton, Aviation Safety Engineer, Regulations and Policy Group, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–4964, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 6730: Rotorcraft Servo System.

(d) This amendment becomes effective on November 26, 2010.

Note 2: The subject of this AD is addressed in European Aviation Safety Agency (France) Emergency AD No. 2007–0141–E, dated May 21, 2007.

Issued in Fort Worth, Texas, on October 12, 2010.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–26565 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0449; Directorate Identifier 2009–SW–38–AD; Amendment 39–16456; AD 2010–20–21]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register.** That AD applies to the products listed above. The AD number, as shown in the PART 39—AIRWORTHINESS DIRECTIVES section, is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective November 9, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Mark Wiley, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This AD, Amendment 39–16456 (75 FR 61341, October 5, 2010), requires modifying the fuselage electrical installation and the overhead panel electrical installation for Agusta S.p.A. Model A109E helicopters.

As published, the AD number shown in the third column on **Federal Register** page 61342 under item 2. of PART 39—AIRWORTHINESS DIRECTIVES section is incorrect. The AD number shown is "2020–20–21;" the correct AD number should be "2010–20–21."

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register.**

The effective date of this AD remains November 9, 2010.

Correction of Regulatory Text

§ 39.13 [Corrected]

In the **Federal Register** document 2010–24723, filed October 4, 2010 and published on October 5, 2010 (75 FR 61341), on page 61342, in the third column, under "§ 39.13 [Amended]," the AD number is corrected to read as follows:

2010–20–21 AGUSTA S.p.A.: Amendment 39–16456; Docket No. FAA–2010–0449; Directorate Identifier 2009–SW–38–AD.

Issued in Fort Worth, Texas, on October 12, 2010.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–26569 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0407; Airspace Docket No. 10–AGL–7]

Amendment of Class E Airspace; Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Williston, ND, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Sloulin Field

International Airport, Williston, ND. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 17, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Williston, ND, creating additional controlled airspace at Sloulin Field International Airport (75 FR 34391) Docket No. FAA–2010–0407. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Sloulin Field International Airport, Williston, ND. Geographic coordinates will be updated in accordance with the FAA's National Aeronautical Navigation Services. This action is necessary for the safety and management of IFR operations at the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL ND E5 Williston, ND [Amended]

Sloulin Field International Airport, ND
(Lat. 48°10′41″ N., long. 103°38′32″ W.)
Williston VORTAC
(Lat. 48°15′12″ N., long. 103°45′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Sloulin Field International Airport, and within 4 miles each side of the Williston VORTAC 317° radial extending from the 6.6-mile radius to 12.7 miles northwest of the airport, and within 4 miles each side of the 304° bearing from the airport extending from the 6.6-mile radius to 12.1 miles northwest of the airport, and within 4 miles each side of the 124° bearing from the airport extending from the 6.6-mile radius to 13.4 miles southeast of the airport, and within 3.8 miles each side of the Williston VORTAC 135° radial extending from the 6.6-mile radius to 12.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Williston VORTAC extending from the Williston VORTAC 172° radial clockwise to V–430, and within 39.2 miles of the Williston VORTAC extending from V–430 clockwise to V–71, and within a 60-mile radius of the Williston VORTAC extending from V–71 clockwise to the Williston VORTAC 172° radial, excluding those portions within Federal airways.

Issued in Fort Worth, Texas, on October 7, 2010.

Anthony D. Roetzel,

Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26525 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–267; Airspace Docket No. 10–AGL–5]

Amendment of Class E Airspace; Youngstown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Youngstown, OH to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Youngstown Elser Metro Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort

Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On June 28, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Youngstown, OH, creating additional controlled airspace at Youngstown Elser Metro Airport (75 FR 36583) Docket No. FAA–2010–267. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Youngstown Elser Metro Airport, Youngstown, OH. This action is necessary for the safety and management of IFR operations at the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

AGL OH E5 Youngstown Elser Metro Airport, OH [Amended]

Youngstown Elser Metro Airport, OH
(Lat. 40°57′42″ N., long. 80°40′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Youngstown Elser Metro Airport, and within 4 miles each side of the 108° bearing from the airport extending from the 6.4-mile radius to 8.8 miles east of the airport, and within 4 miles each side of the 091° bearing from the airport extending from the 6.4-mile radius to 9.5 miles east of the airport, and within 4 miles each side of the 270° bearing from the airport extending from the 6.4-mile radius to 10.9 miles west of the airport.

Issued in Fort Worth, Texas, on October 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26526 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0685; Airspace Docket No. 10–ASO–27]

Establishment of Class E Airspace; Bamberg, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Bamberg, SC, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Bamberg County Airport.

DATES: Effective 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On August 27, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Bamberg, SC (75 FR 52654) Docket No. FAA–2010–0685. Interested persons are invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes the Class E airspace extending upward from 700 feet above the surface at Bamberg, SC, to provide controlled airspace required to support the SIAPs developed for Bamberg County Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

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

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

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

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

* * * * *

ASO SC E5 Bamberg, SC [NEW]

Bamberg County Airport, SC
(Lat. 33°18′16″ N., long. 81°06′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Bamberg County Airport.

Issued in College Park, Georgia, on October 12, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26686 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0603; Airspace Docket No. 10–ASW–9]

Revocation of Class E Airspace; Franklin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace for Franklin, TX. Abandonment of the former Rocking 7 Ranch Airport and cancellation of all Standard Instrument Approach Procedures (SIAP) has eliminated the need for controlled airspace in the Franklin, TX, area. The FAA is taking this action to ensure the efficient use of airspace within the National Airspace System.

DATES: Effective date: 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 28, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to remove Class E airspace for Franklin, TX (75 FR 36586) Docket No. FAA–2010–0603. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing the Class E airspace extending upward from 700 feet above the surface at the former Rocking 7 Ranch Airport, Franklin, TX. The airport has been abandoned and all SIAPs have been cancelled, therefore, controlled airspace is no longer needed for IFR operations.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Rocking 7 Ranch Airport, Franklin, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ASW TX E5 Franklin, TX [Removed]

Issued in Fort Worth, Texas on October 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26532 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0268; Airspace Docket No. 10–ACE–2]

Revocation of Class E Airspace; Chilicothe, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace for Chilicothe, MO. Airport management and air traffic control facility managers have determined that the Class E surface area airspace at Chilicothe Municipal Airport is no longer necessary and will not compromise the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 28, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to remove Class E airspace for Chilicothe, MO (75 FR 36587) Docket No. FAA–2010–0268. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing the Class E airspace designated as a surface area at Chilicothe Municipal Airport, Chilicothe, MO. Airport and air traffic control facility management have determined that this airspace is no longer needed and will not compromise the safety and management of IFR operations at the airport, and that airport users will receive greater benefit from its removal.

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

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled surface area airspace at Chilicothe Municipal Airport, Chilicothe, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASW TX E2 Chilicothe, MO [Removed]

Issued in Fort Worth, Texas on October 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26522 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2009–1050; Airspace Docket No. 09–ASW–40]

RIN 2120–AA66

Amendment and Establishment of Restricted Areas and Other Special Use Airspace, Razorback Range Airspace Complex, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on July 29, 2010; Airspace Docket No. 09–ASW–40, FAA Docket No. FAA–2009–1050. Subsequent to publishing the final rule, three geographic coordinates along Arkansas State Highway 10 and three geographic coordinates along Arkansas State Highway 22 that were used in defining the boundary for restricted areas R–2402A, R–2402B, and R–2402C changed in the aeronautical database. This action corrects those coordinates in the respective airspace descriptions.

DATES: Effective date 0901 UTC, November 18, 2010.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 29, 2010, a final rule was published in the **Federal Register** to establish two restricted areas (R–2402B and R–2402C) and amend an existing restricted area (renaming R–2402 to R–2402A) in the Razorback Range Airspace Complex, AR (75 FR 44719). As a result of further review, the FAA's National Aeronautical Navigation Services (formerly the National Aeronautical Charting Office) and Memphis air route traffic control center determined that a minor refinement was needed for the geographic coordinates used to define where the restricted area boundaries intersected Arkansas State Highways 10 and 22. The correction adjusts the six geographic coordinates defining the points where the restricted areas intersect and overlay those highways.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal descriptions for R–2402A, R–2402B, and R–2402C, Fort Chaffee, AR, as published in the **Federal Register** on July 29, 2010, (75 FR 44719), FR Doc. 2010–18665, and incorporated by reference in 14 CFR part 73, are corrected as follows:

§ 73.24 [Amended]

■ On page 44720, columns 1 and 2, correct the boundaries descriptions for R–2402A, R–2402B, and R–2402C, Fort Chaffee, AR, to read as follows:

* * * * *

R–2402A Fort Chaffee, AR [Corrected]

By removing the boundaries description and substituting:

Boundaries. Beginning at lat. 35°17′49″ N., long. 94°03′01″ W.; to lat. 35°17′00″ N., long. 94°03′01″ W.; to lat. 35°17′00″ N., long. 94°01′01″ W.; to lat. 35°10′05″ N., long. 94°01′01″ W.; thence west along Arkansas State Highway No. 10 to lat. 35°11′35″ N., long. 94°12′01″ W. to lat. 35°13′50″ N., long. 94°12′01″ W.; to lat. 35°18′10″ N., long. 94°12′01″ W.; to lat. 35°18′10″ N., long. 94°09′54″ W.; thence east along Arkansas State Highway No. 22 to the point of beginning.

* * * * *

R–2402B Fort Chaffee, AR [Corrected]

By removing the boundaries description and substituting:

Boundaries. Beginning at lat. 35°18′22″ N., long. 93°55′38″ W.; thence clockwise along a 7–NM radius circle centered at lat. 35°15′26″ N., long. 94°03′24″ W.; to lat. 35°10′42″ N., long. 94°09′43″ W.; thence east along Arkansas State Highway 10 to lat. 35°10′05″ N., long. 94°01′01″ W.; to lat. 35°17′00″ N., long. 94°01′01″ W.; to lat. 35°17′00″ N., long. 94°03′01″ W.; to lat. 35°17′49″ N., long. 94°03′01″ W.; thence east along Arkansas State Highway 22 to the point of beginning.

* * * * *

R–2402C Fort Chaffee, AR [Corrected]

By removing the boundaries description and substituting:

Boundaries. Beginning at lat. 35°21′48″ N., long. 94°06′59″ W.; thence clockwise along a 7–NM radius circle centered lat lat. 35°15′26″ N., long. 94°03′24″ W.; to lat. 35°18′22″ N., long. 93°55′38″ W.; thence west along Arkansas State Highway 22 to lat. 35°18′10″ N., long. 94°09′54″ W.; to the point of beginning.

* * * * *

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

Edith V. Parish,

Manager, Airspace Regulations and ATC Procedures Group.

[FR Doc. 2010–26568 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC26

Privacy Act; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule: Technical Amendments.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury is revising the title of an Internal Revenue Service (IRS) system of records identified in this part.

DATES: October 22, 2010.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: 202–622–0874. FAX: 202–622–3895. E-mail: *dale.underwood@do.treas.gov.*

SUPPLEMENTARY INFORMATION: The Department of the Treasury is publishing separately in the **Federal Register** the notice of alterations to three systems of records maintained by the Office of Professional Responsibility. One of those systems, Treasury/IRS 37.009 had previously been entitled "Enrolled Agent Records." On December 12, 2006, the Department published a notice in the **Federal Register** at 71 FR 69613 to amend the title to "Enrolled Agents and Resigned Enrolled Agents." A concurrent change to the title found in the table at 31 CFR 1.36(g)(1)(viii) was not made at that time. This final rule amends the title of 37.009 from "Enrolled Agent Records" to Treasury/IRS 37.009—Enrolled Agent and Enrolled Retirement Plan Agent Records." The Department has previously claimed an exemption from provisions of the Privacy Act for this system of records pursuant to 5 U.S.C. 552a(k)(2). No new exemptions are being claimed for this system.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system contains investigatory material compiled for law enforcement purposes. This system of records continues to contain investigatory material compiled for law enforcement purposes.

These regulations are being published as a final rule because the amendments do not impose any requirements on any member of the public and do not alter the procedures relating to the way in which the Departmental Offices currently handle FOIA and PA obligations. These amendments are the most efficient means for the Treasury Department to implement its internal requirements for complying with the FOIA and the Privacy Act. Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the **Federal Register**.

The Department has determined that a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) is not required because these regulatory amendments do not change the legal effects of the current regulations nor do they have any impact on those regulated. The amendment updates a name change to an existing system.

As required by Executive Order 12866, it has been determined that this rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

■ Part 1, subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 paragraph (g)(1)(viii) is amended by revising the entry "IRS 37.009" to read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this subpart.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

No.	System name
* * *	* *
IRS 37.009	Enrolled Agent and Enrolled Retirement Plan Agent Records.
* * *	* *

Dated: September 28, 2010.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2010–26327 Filed 10–21–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0441]

RIN 1625–AA09

Drawbridge Operation Regulation; Arkansas Waterway, Pine Bluff, AR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: Drawbridge operations for the Rob Roy Railroad Drawbridge across the Arkansas Waterway at Mile 67.4 at Pine Bluff, Arkansas. Vessel operators shall contact the remote drawbridge operator via microphone keying four times within in five seconds on VHF–FM Channel 12 when requesting a draw opening. This keying will activate an indicator on the remote drawbridge operator's console and send an acknowledgement tone back to the vessel. The remote drawbridge operator will then establish verbal radio communications with the vessel and operate the drawspan as normal.

DATES: This rule is effective on November 22, 2010.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0441 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0441 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Eric A Washburn, Bridge Administrator, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 25, 2010, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Arkansas Waterway, Pine Bluff, AR in the **Federal Register** (75 FR 122). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Arkansas Waterway is a part of the McClellan-Kerr Arkansas River Navigation System. The System rises in the vicinity of Catoosa, Oklahoma, and embraces improved natural waterways and a canal to empty into the Mississippi River in southeast Arkansas. The Arkansas Waterway drawbridge operation regulations contained in 33 CFR 117.123(a), state that the draw of the Rob Roy Railroad Drawbridge, mile 67.4, at Pine Bluff, Arkansas, is maintained in the closed to navigation position and is remotely operated. Vessels requesting an opening shall establish contact by radio/telephone with the remote drawbridge operator on VHF–FM Channel 12 in Omaha, Nebraska.

In order to better differentiate between vessel and rail traffic for the remote drawbridge operator, Union Pacific Railroad requested this drawbridge be operated where vessels would key their VHF–FM radio microphone four times in five seconds and would receive an acknowledgement tone from the remote drawbridge operator. The keying-in will initiate an indicator on the remote drawbridge operator's console and the operator will then establish normal verbal radio communications with the vessel.

The Coast Guard has determined this regulation change will improve communications between the remote drawbridge operator and vessel operators and reduce drawspan opening delays experienced previously from missed calls under the prior regulatory guidance.

Discussion of Comments and Changes

There were no comments to the proposed regulatory change.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule on commercial traffic operating on the Arkansas Waterway to be so minimal that a full Regulatory Evaluation is unnecessary. We anticipate that the new operating procedures enacted by this change will benefit the vessels transiting the bridge by enhancing communications between the remote drawbridge operator and vessel operators and reduce drawspan opening delays.

Small Entities

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

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph 32(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise paragraph (a) of § 117.123 to read as follows:

§ 117.123 Arkansas Waterway.

(a) Across the Arkansas Waterway, the draw of the Rob Roy Drawbridge, mile 67.4, at Pine Bluff, Arkansas is maintained in the closed to navigation position and is remotely operated. Any vessel which requires an opening of the draw of this bridge shall establish contact by radiotelephone with the remote drawbridge operator on VHF–FM Channel 12 in Omaha, Nebraska. To establish contact, the vessel shall key the VHF–FM radio microphone four times in five seconds and listen for an acknowledgement tone. The remote drawbridge operator will then establish normal verbal radio communication on VHF–FM Channel 12 and advise the vessel whether the requested span can be immediately opened and will maintain constant radio contact with the vessel until the requested span has opened and vessel passage has been completed. The bridge is equipped with a Photoelectric Boat Detection System to prevent the span from lowering if there is an obstruction under the span. If the drawbridge cannot be opened immediately, the remote drawbridge operator will notify the calling vessel and provide an estimated time for a drawspan opening.

* * * * *

Dated: October 12, 2010.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 2010–26672 Filed 10–21–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0954]

Drawbridge Operation Regulation; Illinois River, Pekin, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Pekin Railroad Drawbridge across the Illinois Waterway, mile 151.2, Pekin, Illinois. The deviation is necessary to allow the replacement of lift cables and associated mechanisms on the lift span and allows the bridge to be maintained in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective for five days starting at 6 a.m. on November 9, 2010 and ending at 11:59 p.m. on November 13, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0954 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0954 in the “Keyword” box and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Coast Guard; telephone 314–269–2378, e-mail *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad requested a temporary deviation for the Pekin Railroad Drawbridge, across the Illinois Waterway, mile 151.2, at Pekin, Illinois to remain in the closed-to-navigation position for a five day period while lift cables and associated mechanisms are replaced on the lift span. The Pekin Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Illinois Waterway.

The Pekin Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 34.3 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 12, 2010.

Eric A. Washburn,

Bridge Administrator.

[FR Doc. 2010–26674 Filed 10–21–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0316]

RIN 1625–AA87

Security Zones; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request comments.

SUMMARY: The Coast Guard is issuing an interim rule based on comments received from the subject Notice of Proposed Rulemaking published in the **Federal Register** on May 27, 2010. This interim rule establishes moving security zones for certain vessels for which the Captain of the Port, Port Arthur deems enhanced security measures necessary. In addition, it establishes security zones encompassing the mooring basins of LNG carriers while they are moored at the Golden Pass LNG facility in Sabine, TX and/or the Sabine Pass LNG facility located in Cameron Parish, LA.

DATES: This interim rule is effective in the CFR on October 22, 2010. This rule is effective with actual notice for the purposes of enforcement on August 23, 2010. Comments and related material must be received by the Coast Guard on or before November 22, 2010. Requests for public meetings must be received by the Coast Guard on or before November 1, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0316 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX; telephone 409–719–5086, e-mail *scott.k.whalen@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0316), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. Insert "USCG–2009–0316" in the "Keyword" box. Click "Search" then in the interim rule row click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–0316" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

On May 27, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX" in the **Federal Register** (75 FR 29695). We received one comment on the proposed rule. No meetings were requested and none were held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This finding is based on the fact that the Coast Guard received only one comment concerning the published NPRM and that the changes incorporated are not substantive. That is, the changes will not result in any interference to normal vessel traffic in the area. By making the interim rule effective less than 30 days after publication the necessary security zones can be implemented without further delay. And, additional comments and the security zones established by this interim rule will be evaluated throughout the interim rule comment period.

Basis and Purpose

The Coast Guard is establishing moving security zones for certain vessels, for which the Captain of the Port deems enhanced security measures are necessary. Mariners will be notified of the activation of a moving security zone by Broadcast Notice to Mariners. Active moving security zones may also be identified by the presence of escort vessels displaying flashing blue law enforcement lights.

The moving security zones would be activated for certain vessels within the U.S. territorial waters through Sabine Bank Channel, Sabine Pass Channel and the Sabine-Neches Waterway, extending from the surface to the bottom. These moving security zones would extend channel edge to channel edge on the Sabine Bank and Sabine Pass Channel and shoreline to shoreline on the Sabine-Neches Waterway, 2 miles ahead and 1 mile astern of the designated vessels while in transit. Meeting, crossing or overtaking situations are not permitted within the security zone unless specifically authorized by the Captain of the Port.

In addition, the Coast Guard is establishing security zones for the mooring basins at the Golden Pass LNG facility in Sabine, TX and the Sabine Pass LNG facility located in Cameron Parish, LA while LNG carriers are moored at these facilities.

These proposed security zones would be part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels not exempted under paragraph (b) of § 165.819 would be prohibited from entering or remaining in these security zones unless authorized by the Captain of the Port, Port Arthur or his designated representative. For authorization to enter the proposed security zones, vessels can contact the Captain of the Port's on-scene representative or Vessel Traffic Service Port Arthur on VHF Channel 01A or 65A, by telephone at (409) 719–5070, or by facsimile at (409) 719–5090.

Discussion of Comments and Changes

The Coast Guard received one comment requesting that the establishment of a security zone extending 100-feet around LNG carriers while moored at Sabine Pass LNG and Golden Pass LNG facilities be extended to include the entire mooring basin. The Coast Guard concurs with this recommendation and modified the regulatory language in § 165.819 (a)(1) accordingly. Additionally, the commenter noted that the location of the Sabine Pass facility should be changed from Cheniere, LA to Cameron Parish, LA. This change was also incorporated into the final regulatory language.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the proposed fixed security zones around moored LNG carriers would be of limited size and duration and the affected area would not hinder or delay regular vessel traffic. The moving security zone wound be limited and would not create undue delay to vessel traffic because vessel traffic may request permission to enter the zone from the Captain of the Port.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the fixed or moving security zones. The fixed security zones are of limited size and duration and the affected area will not hinder or delay regular vessel traffic. The moving security zone rule will not create undue delay to vessel traffic because vessel traffic may request permission to enter the zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule addresses regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new § 165.819 to read as follows:

§ 165.819 Security Zone; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX.

(a) *Location.* (1) The following LNG facility mooring basins are designated as fixed security zones whenever LNG carriers are moored within them:

(i) *Golden Pass LNG, Sabine TX:* All waters south of a line connecting the following points—beginning at 29°45′58″ N, 093°55′40″ W; then east to a point at 29°45′52.8″ N, 093°55′20.8″ W; then bearing 120° T to the shoreline at 29°45′50″ N, 093°55′17″ W.

(ii) *Sabine Pass LNG, Cameron Parish, LA:* All waters north of a line connecting the following points—beginning at the shoreline in position 29°44′34.7″ N, 093°52′29″ W; then southeast to a point at 29°44′31.4″ N, 093°52′26.4″ W; then bearing 121° T to a point at 29°44′25.2″ N, 093°52′14.6″ W; then bearing 116° T to the shoreline at 29°44′23.75 N, 093°52′00″ W.

(2) The following areas are designated as moving security zones: All waters of the Captain of the Port, Port Arthur Zone commencing at U.S. territorial waters and extending from the surface to the bottom, channel edge to channel edge on the Sabine Bank and Sabine Pass Channels and shoreline to shoreline on the Sabine-Neches Waterway, 2 miles ahead and 1 mile astern of certain designated vessels while in transit within in the Captain of the Port, Port Arthur zone. Mariners would be notified of designated vessels by Broadcast Notice to Mariners and the presence of escort vessels displaying flashing blue law enforcement lights.

(b) *Regulations.* (1) Entry into or remaining in a fixed security zone described in paragraph (a)(1) of this section is prohibited for all vessels except:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational or logistical support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by Federal, State, county, or municipal law enforcement agencies.

(2) Entry into or remaining in a moving security zone described in paragraph (a)(2) of this section is prohibited for all vessels except:

(i) Moored vessels or vessels anchored in a designated anchorage area. A moored or an anchored vessel in a security zone described in paragraph (a)(2) of this section must remain moored or anchored unless it obtains permission from the Captain of the Port to do otherwise;

(ii) Commercial vessels operating at waterfront facilities located within the zone;

(iii) Vessels providing direct operational support to commercial vessels within a moving security zone;

(iv) Vessels operated by Federal, State, county, or municipal law enforcement agencies.

(3) Meeting, crossing or overtaking situations are not permitted within the security zone described in paragraph (a)(2) of this section unless specifically authorized by the Captain of the Port.

(4) Other persons or vessels requiring entry into security zones described in this section must request permission from the Captain of the Port, Port Arthur or designated representative.

(5) To request permission to enter a security zone described in this section, contact Vessel Traffic Service Port Arthur on VHF Channel 01A or 65A; by telephone at (409) 719–5070; by fax at (409) 719–5090; or contact the Captain of the Port's designated on-scene patrol vessel on VHF channel 13 or 16.

(6) All persons and vessels within a security zone described in this section must comply with the instructions of the Captain of the Port, Port Arthur, designated on-scene U.S. Coast Guard patrol personnel or other designated representatives. Designated on-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Designated representatives include Federal, State, local and municipal law enforcement agencies.

Dated: August 23, 2010.

J.J. Plunkett,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2010–26670 Filed 10–21–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0846]

RIN 1625–AA87

Security Zone, in the Vicinity of the Michoud Slip Position 30°0′34.2″ N, 89°55′40.7″ W to Position 30°0′29.5″ N, 89°55′52.6″ W

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Captain of the Port of New Orleans, under the authority of the Magnuson Act, 33 CFR 165.30 and 165.33, has established a security zone in the vicinity of the Michoud Slip encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W to position 30°0′29.5″ N, 89°55′52.6″ W across the mouth of the slip. Vessels will not be allowed to enter this security zone without the permission of the Captain of the Port, New Orleans. This security zone is necessary to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

DATES: This rule is effective in the CFR from October 22, 2010 through December, 31, 2010. This rule is effective with actual notice for purposes of enforcement from September 11, 2010, at 12 noon, through December 31, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0846 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0846 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Commander (LCDR) Eva VanCamp, Sector New Orleans, Coast Guard; telephone 504–365–2392, e-mail *Eva.VanCamp@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to public interest to delay the rule. Immediate action is necessary to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** This security zone is needed to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature. Additional notice is impracticable and contrary to public interest.

Basis and Purpose

An investigation associated with the Deepwater Horizon incident is currently taking place in the vicinity of Michoud Slip. A security zone has been established encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W to position 30°0′29.5″ N, 89°55′52.6″ W across the mouth of the slip. Vessels will not be allowed to enter this security zone without the permission of the Captain of the Port, New Orleans. This security zone is necessary to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

Discussion of Rule

The Coast Guard has established several safety and security zones in South Louisiana to protect vessels and facilities engaged in operations associated with the Deepwater Horizon incident. This security zone is in addition to those safety and security zones and adds additional requirements which are needed to ensure the safety of evidence needed for the investigation of the incident. This security zone is necessary to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

Regulatory Analyses

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

Regulatory Planning and Review

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

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). Due to its location the impacts on routine navigation are expected to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels, intending to transit in the vicinity of Michoud Slip, encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W to position 30°0′29.5″ N, 89°55′52.6″ W across the mouth of the slip. This security zone will not have significant impact on a substantial number of small entities because of its location. If you are a small business entity and are significantly affected by this regulation please contact Lieutenant Commander (LCDR) Eva VanCamp, Sector New Orleans, at 504–365–2392, or e-mail *Eva.VanCamp@uscg.mil.*

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

An environmental analysis checklist and a categorical exclusion determination will be uploaded to the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.06–1, 6.05–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0846 is added to read as follows:

§ 165.T08–0846 Security Zone, in the Vicinity of the Michoud Slip.

(a) *Location.* The area in the vicinity of Michoud Slip, encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W. to position 30°0′29.5″ N, 89°55′52.6″ W. across the mouth of the slip is a security zone.

(b) *Enforcement period.* This section will be enforced from September 11, 2010, at 12 noon, through December 31, 2010.

(c) *Regulations.* (1) In accordance with the general regulation in § 165.33 of this part, vessels are prohibited from transiting in the vicinity of Michoud Slip, encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W. to position 30°0′29.5″ N, 89°55′52.6″ W. across the mouth of the slip.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at telephone (504) 365–2543.

(3) All persons and vessels obtaining permission to enter the security zone established in paragraph (a) of this section must comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

Dated: September 10, 2010.

E.M. Stanton,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2010–26673 Filed 10–21–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AN71

Loan Guaranty: Elimination of Redundant Regulations; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; technical correction.

SUMMARY: The Department of Veterans Affairs (VA) published a document in the **Federal Register** on June 15, 2010 (75 FR 33704), amending its loan guaranty regulations to eliminate redundant regulations following the phase-in of a new electronic reporting system. At that time, we failed to update the cross-reference citations within the redesignated sections. This document corrects those sections by replacing the incorrect cross-reference citations with the updated, accurate cross-references. These nonsubstantive changes are made for clarity and accuracy.

DATES: *Effective Date:* October 22, 2010.

FOR FURTHER INFORMATION CONTACT: William White, Acting Assistant Director for Loan Processing and Valuation (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9543.

SUPPLEMENTARY INFORMATION: On June 15, 2010 (75 FR 33704), VA amended 38 CFR part 36 to eliminate redundant and obsolete regulations found at 38 CFR 36.4300 through 36.4393 (the "36.4300 series"). VA redesignated regulations that had previously been published at 38 CFR 36.4800 through 36.4893 (the "36.4800 series") to replace the 36.4300 series in its entirety.

With this action, VA is amending the 36.4300 series regulations to update remaining internal cross-references to the 36.4800 series regulations. This action is necessary because the 36.4800 series has been removed from 38 CFR part 36, making the current cross reference citations to the series obsolete. VA is amending each citation by simply replacing the numbers "48" with "43" (*e.g.,* changed the reference to § 36.4860 to read § 36.4360.)

For the convenience of the reader, we have included a redesignation table that shows each affected section, the cross reference that is removed, and the new cross reference that is added in its place.

Administrative Procedure Act

This final rule is only a technical correction to the interior cross-references within these regulations. Accordingly, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

List of Subjects in 38 CFR Part 36

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

Approved: October 18, 2010.

Robert C. McFetridge,

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

■ For the reasons set forth in the preamble, 38 CFR part 36 is corrected by making the following correcting amendments:

PART 36—LOAN GUARANTY

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

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

§§ 36.4301, 36.4302, 36.4303, 36.4306, 36.4307, 36.4309, 36.4310, 36.4312, 36.4313, 36.4314, 36.4315, 36.4316, 36.4317, 36.4319, 36.4320, 36.4322, and 36.4323 [Amended]

■ 2. In the table below, for each section indicated in the left column, remove the cross-reference indicated in the middle column from wherever it appears in the section, and add the cross-reference indicated in the right column:

REDESIGNATION TABLE

Amended sections:	Remove cross-reference citations:	Add, in its place, new cross-reference citations:
§ 36.4301	§§ 36.4860 through 36.4865	§§ 36.4360 through 36.4365.
§ 36.4301	§ 36.4801	§ 36.4301.
§ 36.4301	§§ 36.4800 through 36.4893	§§ 36.4300 through 36.4393.
§ 36.4301	§ 36.4814	§ 36.4314.
§ 36.4301	§ 36.4823	§ 36.4323.
§ 36.4301	§ 36.4819	§ 36.4319.
§ 36.4301	§ 36.4818	§ 36.4318.
§ 36.4301	§ 36.4824(a)	§ 36.4324(a).
§ 36.4301	§ 36.4814	§ 36.4314.
§ 36.4302(e)	§ 36.4803(g)	§ 36.4303(g).
§ 36.4302(g)	§ 36.4803	§ 36.4303.
§ 36.4302(h)	§ 36.4815	§ 36.4315.
§ 36.4303(a)(2)	§ 36.4801	§ 36.4301.
§ 36.4303(a)(2)	§ 36.4804	§ 36.4304.
§ 36.4303(d)(3)	§ 36.4801(c)	§ 36.4301(c).
§ 36.4303(d)(3)	§ 36.4804	§ 36.4304.

REDESIGNATION TABLE—Continued

Amended sections:	Remove cross-reference citations:	Add, in its place, new cross-reference citations:
§ 36.4303(f)	§ 36.4853	§ 36.4353.
§ 36.4303(l)(1)(i)(A)	§ 36.4813(e)(2)	§ 36.4313(e)(2).
§ 36.4303(l)(1)(i)(B)	§ 36.4813(d)(8)	§ 36.4313(d)(8).
§ 36.4303(l)(1)(ii)(D)	§ 36.4813(d)(8)	§ 36.4313(d)(8).
§ 36.4306(a)	§ 36.4802(a)	§ 36.4302(a).
§ 36.4306(a)(2)	§ 36.4813(d)(7)(i)	§ 36.4313(d)(7)(i).
§ 36.4306(g)(4)	§ 36.4813(d)(6)	§ 36.4313(d)(6).
§ 36.4306(g)(4)	§ 36.4813	§ 36.4313.
§ 36.4306(g)(5)	§ 36.4802(a)	§ 36.4302(a).
§ 36.4307(a)(3)	§ 36.4839(a)(4)	§ 36.4339(a)(4).
§ 36.4307(a)(3)	§ 36.4840	§ 36.4340.
§ 36.4307(a)(4)(i)	§ 36.4813(d)	§ 36.4313(d).
§ 36.4307(a)(4)(ii)	§ 36.4839(a)(4)	§ 36.4339(a)(4).
§ 36.4307(a)(5)	§ 36.4840	§ 36.4340.
§ 36.4307(b)	§ 36.4802(a)	§ 36.4302(a).
§ 36.4307(b)	§ 36.4802(h)	§ 36.4302(h).
§ 36.4307(c)	§ 36.4854	§ 36.4354.
§ 36.4309(c)(1)(vi)	§ 36.4826	§ 36.4326.
§ 36.4309(f)(2)	§ 36.4850(i)(2)	§ 36.4350(i)(2).
§ 36.4310(a)	§ 36.4815	§ 36.4315.
§ 36.4310(d)	§ 36.4837	§ 36.4337.
§ 36.4312(b)	§ 36.4813(d)(6) and (d)(7)	§ 36.4313(d)(6) and (d)(7).
§ 36.4312(c)	§ 36.4815	§ 36.4315.
§ 36.4313(d)(1)(v)	§ 36.4829	§ 36.4329.
§ 36.4313(d)(1)(vi)	§§ 36.4860 through 36.4865	§§ 36.4360 through 36.4365.
§ 36.4313(d)(4)	§ 36.4859	§ 36.4359.
§ 36.4313(d)(7)(iii)	§ 36.4801	§ 36.4301.
§ 36.4313(d)(7)(iv)	§ 36.4845(b)	§ 36.4345(b).
§ 36.4314(b)	§ 36.4824(a)	§ 36.4324(a).
§ 36.4314(d)	§ 36.4845(b)	§ 36.4345(b).
§ 36.4314(f)(2)	§ 36.4822(a)	§ 36.4322(a).
§ 36.4315(a)(3)	§ 36.4840	§ 36.4340.
§ 36.4316	§ 36.4801	§ 36.4301.
§ 36.4316(c)	§ 36.4828(b)	§ 36.4328(b).
§ 36.4317(c)(4)	§ 36.4827	§ 36.4327.
§ 36.4317(c)(13)	§ 36.4850(g)(1)(iv)	§ 36.4350(g)(1)(iv).
§ 36.4319(a)	§ 36.4817(c)	§ 36.4317(c).
§ 36.4319(c)(1)	§ 36.4801	§ 36.4301.
§ 36.4319(c)(2)	§ 36.4801	§ 36.4301.
§ 36.4320(a)	§ 36.4817	§ 36.4317.
§ 36.4320(a)	§ 36.4828	§ 36.4328.
§ 36.4322(b)(2)	38 CFR 36.4848	38 CFR 36.4348.
§ 36.4322(c)	§ 36.4801	§ 36.4301.
§ 36.4322(f)(1)(iv)	§ 36.4823	§ 36.4323.
§ 36.4323(c)	§ 36.4814	§ 36.4314.
§ 36.4323(d)(5)(ii)	§ 36.4854(b)	§ 36.4354(b).
§ 36.4323(d)(5)(ii)(B)	§ 36.4827	§ 36.4327.
§ 36.4323(e)	§ 36.4828	§ 36.4328.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 0909171277–0491–02]

RIN 0648–XR74

Endangered and Threatened Wildlife and Plants; Threatened Status for the Southern Distinct Population Segment of the Spotted Seal

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final determination to list the southern distinct population segment (DPS) of the spotted seal (*Phoca largha*) as a threatened species under the Endangered Species Act (ESA). Because the southern DPS occurs outside the United States, no critical habitat is proposed for designation.

DATES: This final rule is effective on November 22, 2010.

ADDRESSES: NMFS, Protected Resources Division, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Kaja Brix at the address above or at (907)

586–7235, or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713–1401. The final rule, status review, and other materials supporting this final rule can be found on our Web site at *http://www.fakr.noaa.gov/*.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2008, we initiated a status review of the spotted seal under the ESA (73 FR 16617). On May 28, 2008, we received a petition from the Center for Biological Diversity to list the spotted seal as a threatened or endangered species under the ESA, primarily due to concern about threats to this species' habitat from climate warming and loss of sea ice. The Petitioner also requested that critical habitat be designated for spotted seals concurrent with listing under the ESA. In response to this petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 51615; September 4, 2008). Accordingly, we proceeded with the ongoing status review of spotted seals and solicited information pertaining to the species.

After the status review report was completed by the Biological Review Team (BRT), on October 20, 2009 (Boveng *et al.,* 2009), we made a 12-month petition finding and proposed to list the southern DPS of the spotted seal as threatened under the ESA (74 FR 53683). In the proposed rule we announced a 60-day public comment period that closed December 21, 2009. We also initiated independent peer review of the proposed listing determination. We fully considered all comments received from peer reviewers and the public in developing this final rule and finalizing the spotted seal status review (all DPSs).

ESA Statutory, Regulatory, and Policy Provisions

The ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range" and the term "threatened species" as "any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range." The ESA's definition of a species includes subspecies and distinct population segments. The term "distinct population segment" (DPS) is not commonly used in scientific discourse, so the U.S. Fish and Wildlife Service (USFWS) and NMFS developed the "Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act" to provide a consistent interpretation of this term for the purposes of listing, delisting, and reclassifying vertebrates under the ESA (61 FR 4722; February 7, 1996). We describe and use this policy in delineating the southern DPS as one of three DPSs of spotted seals.

In conducting the spotted seal status review, we endeavored to assess the threats to the species to the extent such threats can be forecast into the future, keeping in mind that there is greater uncertainty the farther out the analysis extends. The potential consequences of the key threat of climate change have been projected through 2050 and the end of the 21st century. The status review report considered the climate projections through the end of the 21st century in assessing the threats stemming from climate change, noting that there was less variation in the time period leading up to 2050 compared to the period between 2050 and 2100. We used a similar approach to assess the extinction risks from other threats. This review is similar and consistent with the one prepared for the ribbon seal. We have not determined here that 2100 constitutes "the foreseeable future." There is too much variability beyond 2050 to make that determination. As a result, we examined the best scientific and commercial data available out to 2100, all of which recognize these inherent uncertainties.

Because there is little or no information to support a quantitative assessment of the primary threats to spotted seals, our risk assessment was primarily qualitative and based upon expert opinion of the BRT members. This is a common procedure that we have used in numerous other ESA listing determinations (*e.g.,* Pacific salmon, rockfishes, *etc.*).

Basic Species Biology

A review of the life history and ecology of the spotted seal is presented in the status review report (Boveng *et al.,* 2009). The spotted seal (also known as the largha seal) is a close relative of the harbor seal (*Phoca vitulina*). Little information is published on the biological characteristics of spotted seal populations. Spotted seals have a lifespan of about 30 to 35 years. They become sexually mature at 3 to 5 years of age, varying over regions and time, and adult females usually give birth every year to a single pup which is nursed for 2 to 4 weeks and then left to fend for itself.

Spotted seals are widely distributed on the continental shelf of the Beaufort, Chukchi, southeastern East Siberian, Bering and Okhotsk seas, and to the south throughout the Sea of Japan and into the northern Yellow Sea. Their range extends over about 40 degrees of latitude from Point Barrow, Alaska, in the north (71° N. lat.) to the Yangtse River, China, in the south (31° N. lat.). The distribution of spotted seals is seasonally related to specific life history events that can be broadly divided into two periods: late fall through spring, when whelping, nursing, breeding, and molting all take place in association with the presence of sea ice on which the seals haul out, and summer through fall, when the sea ice has melted and spotted seals remain closer to shore to use land for hauling out.

The annual timing of spotted seals' reproduction has evolved to coincide with the average period of maximum extent and stability of the seasonal sea ice, which varies latitudinally across their range. From late fall through spring, spotted seal habitat-use is closely associated with the distribution and characteristics of the seasonal sea ice. The ice provides a dry platform away from land predators during the whelping, nursing, breeding, and molting periods. When sea ice begins to form in the fall, spotted seals start to occupy it immediately, concentrating in large numbers on the early ice that forms near river mouths and estuaries. In winter, as the ice thickens and becomes shorefast along the coasts, spotted seals move seaward to areas near the ice front with broken ice floes. Spotted seals can only make and maintain holes in fairly thin ice and have been known to travel 10 kilometers (km) or more over solid ice in search of cracks or open patches of water. Spotted seals usually avoid very dense, compacted ice and stay near the ice front. Recent research has also shown that, unlike spotted seals in more northerly latitudes, a portion of spotted seals in the Peter the Great Bay and the northern Yellow Sea uses shore lands as haul-out sites for whelping, nursing, breeding, and molting (Wang, 1986; Trukhin, 2005; Nesterenko and Katin, 2008; Nesterenko and Katin, 2009). Spotted seal terrestrial haul-out sites are usually remote and located on isolated mud, sand, or gravel beaches, or on rocks close to shore.

Spotted seals appear to be generalist feeders with a varied diet. Most studies have found that fish are the spotted seal's primary prey. Diet and regional and seasonal differences in foods of spotted seals are related to the seasonal distribution and abundance of their principal prey species.

Summary of Comments Received in Response to the Proposed Rule

We received written comments on the proposed rule from nine commenters during the 60-day comment period (74 FR 53683; October 20, 2009): five from non-profit groups and private individuals, three from oil and gas companies and trade associations, and one from the Marine Mammal Commission. We did not receive a request for a public hearing on the proposed rule. In all, five commenters supported listing the southern DPS of the spotted seal, two opposed the listing, and two commenters stated neither support nor opposition for the ruling.

A joint NMFS/U.S. Fish and Wildlife Service policy requires us to solicit independent expert review from at least three qualified specialists (59 FR 34270; July 1, 1994). Further, in December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. Pursuant to our 1994 policy and the OMB Bulletin, we solicited four independent specialists with expertise in marine mammalogy and with specific knowledge of spotted seals to review our proposed listing determination. We received comments from all four peer reviewers. Three of these reviewers were supportive of our conclusions, and the fourth reviewer had comments and questions regarding certain aspects of the proposed listing.

We fully considered comments received from the public and peer reviewers on the proposed rule in developing this final listing of the southern DPS of the spotted seal. Summaries of the substantive public and peer review comments received regarding our listing determination for the southern DPS, and our responses to all of the significant issues they raise, are provided below. Some peer reviewers also provided helpful comments of an editorial nature that noted inadvertent errors in the proposed rule and offered non-substantive but clarifying changes to wording. We have incorporated these editorial comments in this final rule. Because these comments did not result in substantive changes to the final rule, we have not detailed them here.

We also received comments addressing our final decision regarding the Bering and Okhotsk DPSs. Since that decision is now final and this rulemaking concerns the listing of the southern DPS, we have not provided specific responses to those comments, though some of them are identical to comments on the southern DPS and therefore are addressed in our responses.

Although this final rule incorporates clarifications to our proposed listing based on these comments, as discussed below, none of these clarifications changed our proposed listing determination. This final rule lists the southern DPS of the spotted seal as threatened under the ESA and extends section 9 prohibitions to this DPS.

Independent Peer Reviewer Comments

Comment 1: The peer reviewers varied in their assessments of whether the southern population segment of the spotted seal satisfies the discreteness and significance elements of our DPS policy. Two peer reviewers generally agreed with the conclusion that the southern population segment is both discrete and ecologically significant. Another peer reviewer suggested that emphasizing the unique ecology, behavior, and likely physiological differences between spotted seals in the southern DPS and other populations might provide stronger evidence to support discreteness and significance for the DPS than the emphasis placed in the status review report on limited genetic information. This reviewer also noted that differences between the Peter the Great Bay and Liaodong Bay spotted seal concentrations may be substantial enough to consider them as separate DPSs, but that this possibility was not discussed. Finally, the fourth peer reviewer suggested that given the Peter the Great Bay population appears to be near historical levels and stable, and that Russia has established the Far Eastern Marine Reserve in this bay, an argument could be made that the proposed listing be limited to the Liaodong Bay population.

Response: We agree that there are some distinctive aspects to the ecology and behavior of the southern DPS, and we considered them in evaluating the significance of the DPS to the spotted seal population as a whole. However, these characteristics may reflect adaptations to local conditions and do not necessarily relate directly to population discreteness. We are also unaware of any available information about spotted seal physiology that is relevant to delineating the southern DPS. Therefore, we continue to distinguish the southern DPS based primarily on the available genetic information because we find that these data likely provide stronger direct evidence of spotted seal population structure. Regarding designation of DPSs, Congress directed the Services to use the authority to list them "sparingly," while encouraging the conservation of genetic diversity (61 FR 4722; February 7, 1996). We believe that our decision to include both the Liaodong Bay and Peter the Great Bay concentrations within the southern DPS, rather than to designate them as separate DPSs, is most consistent with this guidance and is supported by the best available data. Moreover, after further review of the available abundance information on the Peter the Great Bay population discussed in the status review report, we conclude that this population has been reduced from historical numbers, as opposed to our characterization in the proposed rule that it is near historical levels. Overall, the available information indicates a long-term decline in abundance. Some growth of this population may have occurred following establishment of the Far Eastern Marine Reserve in 1978. However, recent apparent population stability has been ascribed to limitation by mortality of spotted seals incidental to fishery activities.

Comment 2: Two peer reviewers noted that there were very limited data presented to support the description of the present range of the southern DPS. One of these reviewers characterized the proposed northern extent of the southern DPS (splitting the north coast of Hokkaido) as arbitrary given the lack of data for Tatar Strait and the suggestion by researchers that there may be movement of seals between the southern Okhotsk Sea and Sea of Japan. This reviewer asked whether there are any other data available to support the delineation of the northern extent of the southern DPS, including from any tracking studies on spotted seals in the southern DPS that could provide information on movement patterns. In addition, this reviewer commented that a more formal involvement of scientists working on spotted seals outside U.S. waters would have greatly benefitted delineation of spotted seal DPSs and assessment of their extinction risk.

Response: We acknowledge that additional movement and genetics data, in particular for the Tatar Strait population, might help to resolve some areas of uncertainty in describing the range of the southern DPS. But we are not aware of any available spotted seal tracking data that could inform our delineation of the DPS. Therefore, as discussed in this final rule, we continue to describe the northern extent of this DPS based on the best available genetic data. We also note that the BRT solicited reviews of the spotted seal status review report from several scientists involved in spotted seal research outside U.S. waters, but it received no responses. The ESA requires that our determinations be based upon the best scientific and commercial data available at the time a decision is made.

Comment 3: One peer reviewer noted that given the limited amount of available data for the southern DPS, it is reasonable there is no quantitative evaluation of extinction risk. Another peer reviewer stated that no information was presented on extinction risk relating to small population size or declines in abundance in the southern DPS. This reviewer also noted that no reasons were given for the marked decline of the Liaodong Bay population since 1940, nor were data provided on whether the decline is continuing.

Response: Overall, the southern DPS exists at reduced abundance levels where additional loss would threaten this DPS through demographic stochasticity (variation in population growth arising from chance events in individual survival and reproductive success) or small population effects. Risks related to small population size are discussed in more detail in the spotted seal status review (Boveng *et al.,* 2009). The decline in the Liaodong Bay population in the 20th century has been attributed to over-hunting and habitat destruction. The most recent available abundance estimate for the Liaodong Bay population (2007) is 800 animals.

Comment 4: One peer reviewer stated that the assessment of risks posed by oil and gas development to the southern DPS appears inadequate and cursory, and that the conclusion in the proposed rule that "such activities will not place or contribute to placing the spotted seal in danger of extinction in the foreseeable future" does not appear supportable for this DPS, given population numbers and trends in Peter the Great Bay and Liaodong Bay. A similar public comment was received.

Response: The most significant issue associated with oil and gas exploration and development would be potential oil spills produced by these activities. A large oil spill in the Yellow Sea at the port of Dalian, China, in July 2010 illustrates the potential for spills in this region. We conclude that the risk posed to the southern DPS from oil and gas activities is high given the very low abundance of this DPS and the possible consequences of a large oil spill on these seals, particularly from an oil spill in the Bohai Sea. We also acknowledge that inadequacy or lack of stringency of mechanisms to regulate oil and gas activities in the Yellow Sea could contribute to the cumulative risk faced by the southern DPS, and we have revised the final rule to reflect this.

Public Comments

Comment 5: One commenter stated that the potential effects of pollution on the spotted seal were underestimated.

Response: Most spotted seal contaminant research has been conducted in the Bering Sea and coastal areas around Hokkaido, Japan. Information about pollutants in waters and sediments in the range of the southern DPS were used for inference about potential risk from contaminants. We do not have any information at this time to conclude that there are population-level effects from contaminant exposure. A more detailed discussion of the subject can be found in the status review report (Boveng *et al.,* 2009).

Comment 6: One commenter stated that the lack of regulatory mechanisms to address loss of sea ice habitat due to global warming poses a significant threat to the spotted seal, and so inadequacy of existing regulatory mechanisms should have been included as a significant factor contributing to the extinction risk for the species.

Response: We acknowledge that there are currently no effective mechanisms to regulate global greenhouse gas (GHG) emissions, which are contributing to global climate change and associated loss of sea ice. The risk posed to the southern DPS by the lack of mechanisms to regulate GHG emissions is directly correlated to and difficult to distinguish from the risk posed by the effects of these emissions. The projections we used to assess risks from GHG emissions were based on the assumption that no regulation will take place (the underlying IPCC emissions scenarios were all "non-mitigated" scenarios). Therefore, the lack of mechanisms to regulate GHG emissions is already included in our risk assessment.

We have clarified this final rule to acknowledge that the lack of effective mechanisms to regulate global GHG emissions is contributing to the cumulative risk faced by the southern DPS. We also note that the long persistence of CO_2 in the atmosphere would complicate the effectiveness of any regulatory action. Consequently, the ability of any GHG regulations to effectively counter the climate-change related threats to the species likely would not be discernable until the latter half of the century, when projected conditions are very uncertain regardless of potential regulations.

Comment 7: One commenter disputed our conclusion that the nature and timing of ocean acidification impacts are highly uncertain.

Response: We acknowledge that ocean acidification may affect spotted seal survival and recruitment through disruption of food webs and ecosystem processes. However, the possible ecological outcomes of ocean acidification are complex, are expected to manifest over a timescale of uncertain length, and rely on interaction of numerous variables. While the ocean chemistry changes associated with ocean acidification are predictable, the ultimate effects within the foreseeable future specific to spotted seal viability are much less clear. For example, we do not have sufficient understanding of lower trophic level organisms upon which spotted seal prey depend, including information on the baseline geographic distributions of these organisms, to evaluate the potential impact of ocean acidification on seal prey species. Given the apparent diet flexibility of the spotted seal, we do not believe that ocean acidification is a significant factor causing the southern DPS to become endangered in the foreseeable future.

Comment 8: Two commenters noted that loss of sea ice habitat was identified as a significant risk factor for the southern DPS even though spotted seals have shown the ability to adapt to using terrestrial sites.

Response: The status of the southern DPS of the spotted seal is likely to be maintained or worsened by the cumulative effects of multiple stressors, which include loss of sea ice habitat. As discussed in the spotted seal status review report (Boveng *et al.,* 2009) and this final rule, although spotted seals have shown some capability to adapt to terrestrial breeding and molting sites, they are more vulnerable to predation, disturbance, and disease while hauled out on shore. It is likely that this is why seals that breed ashore select sites such as offshore rocks and uninhabited islands that are relatively inaccessible to predators. In addition, the viability of terrestrial site use may be limited by the relative scarcity of suitable habitat, especially because a portion of the southern DPS already uses terrestrial sites. Thus, we conclude that loss of sea ice habitat is a significant risk factor for the southern DPS.

Comment 9: Two commenters expressed concern about data gaps revealed in the status review report and cited the need for additional research to fill these gaps. One of these commenters also cited the need for strengthened international collaborative efforts to assess the status of spotted seal populations throughout their range, and to identify any need for protective measures.

Response: We acknowledge that there is currently little or no information available to support a quantitative assessment of the primary threats to spotted seals. We agree that additional research and international collaborative efforts may help resolve areas of uncertainty and could add to the ecological knowledge of this species. Our determination to list the southern DPS is supported by the best scientific and commercial data currently available.

Comment 10: Two commenters questioned the timeframe considered in assessing the risk posed to the spotted seal from global climate change, and suggested the possibility that future intervening actions might reduce GHG emissions.

Response: Because the mostly widely accepted climate change projections (which currently form the best available information about future conditions) have been made through the end of the 21st century, we considered climate projections through both 2050 and the end of the 21st century, while keeping in mind that there is greater uncertainty the farther out that projections extend (i.e., beyond 2050). The effect of increased GHG emissions since the preindustrial era has been widespread warming of the climate (IPCC, 2007). A net result of this warming is loss of sea ice. The best available information indicates that sea ice will continue to be affected by climate change, and that even if actions are taken to mitigate GHG emissions, a continued warming trend would be expected through mid-century and beyond (IPCC, 2007). The southern DPS is currently being affected by sea ice loss, and it is expected that by about the middle of the 21st century seasonal sea ice will rarely form within the range of this DPS. Although the uncertainty associated with climate projections is greater the farther out that projections extend, it is clear that loss of sea ice habitat is a significant risk factor for the southern DPS within the foreseeable future. Therefore, we continue to conclude that the timeframes considered in our assessment of the risks posed to this DPS from global climate change are appropriate and are supported by best available scientific data.

Comment 11: One commenter suggested that listing the spotted seal under the ESA may be an avenue toward regulating GHG emissions, and that if the southern DPS is listed as "threatened," a special rule should be implemented for this DPS under ESA section 4(d) to exclude application of ESA take restrictions to GHG-emitting projects. This commenter also stated that in determining whether to list the spotted seal under the ESA, a causal connection must be established between factors suggested as affecting the health of spotted seal populations and NMFS' determinations concerning their status. In addition, this commenter requested that any final rule explicitly acknowledge the lack of scientific data to draw a causal link between GHG emissions from specific projects and effects on the spotted seal or any other species.

Response: NMFS was petitioned to evaluate the status of the spotted seal under the ESA. The mandate of the statute is to determine, on the basis of the best available scientific and commercial data, "whether any species is an endangered species or a threatened species" because of "any" of the factors listed in Section 4(a)(1) of the ESA. The statute thus places emphasis on determining the status of the species, and does not require that the Service attempt to prove causal linkages between particular factors and the resultant status. This final rule fully meets the ESA's standard. Attempting to establish casual linkages between specific GHG emission sources and effects on spotted seals is not necessary to draw conclusions as to whether the southern DPS meets the definition of a "threatened species" under the ESA.

We previously proposed and are now issuing a final rule under section 4(d) of the ESA. In that rule, we extend the section 9 prohibitions to the southern DPS because we conclude that such action is necessary and advisable to provide for the conservation of the southern DPS. We have not excluded from the section 9 prohibitions any specific GHG-emitting project or such projects generally because we do not believe that that type of exclusion is necessary for the implementation of the 4(d) rule or necessary and advisable for the conservation of the species.

Species Delineation

To be considered for listing under the ESA, a group of organisms must constitute a "species," which Section 3(16) of the ESA defines as "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Our DPS policy (61 FR 4722; February 7, 1996) describes two elements to be considered in deciding whether a population segment can be identified as a DPS under the ESA: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) significance of the population segment in relation to the remainder of the species to which it belongs.

The southern segment of spotted seals was found to be discrete primarily on the basis of its genetic composition (Boveng *et al.,* 2009; 74 FR 53683, October 20, 2009). Genetic data on population structure exist from four studies of spotted seals. The preliminary conclusions drawn from examination of mitochondrial (mtDNA) from 247 spotted seals and 18 micro-satellite loci for 207 spotted seals support a phylogeographic break between seals of the Yellow Sea-Sea of Japan region and seals of the Okhotsk, Bering, and Chukchi seas (O'Correy-Crowe and Bonin, 2009). Another study found low nuclear genetic variability among 176 spotted seals from Liaodong Bay, the primary breeding area in the Yellow Sea (Han *et al.,* 2010), a finding consistent with a previous report of low diversity in mtDNA haplotypes (Han *et al.,* 2007). Moreover, a distinctive genetic marker (consisting of a single base-pair insertion in the threonine transfer RNA gene) was reported as present in all seals from Liaodong Bay but not in samples tested from the Sea of Japan and Sea of Okhotsk, indicative of little or no immigration of females into the Yellow Sea population.

A fourth study found no phylogenetic structure in mtDNA from 66 spotted seals sampled along the northern coast of Hokkaido in the far northeastern portion of the Sea of Japan, and could not dismiss the possibility that spotted seals on the northwest Hokkaido coast during winter are part of the southern Sea of Okhotsk breeding population (Mizuno *et al.,* 2003). This is currently the only information available on where in the Sea of Japan to place a population dividing line corresponding to the genetic break suggested by the multi-region DNA study described above. Because no samples from the Tatar Strait (northwest of Hokkaido) have been included in genetic studies, and the samples from Hokkaido are not obviously distinct from the Sea of Okhotsk samples, the population division with the most support from the available genetic data is a line along 43° N. latitude that divides the spotted seal range to include a southern segment composed of the breeding concentrations of the Yellow Sea and Peter the Great Bay in the Sea of Japan. We assessed the existence and implications of international governmental boundaries between breeding populations, and determined that considerations of cross-boundary management and regulatory mechanisms do not outweigh or contradict this division.

The southern segment was also determined to be significant relative to the spotted seal species as a whole based on (1) its persistence in an ecological setting that is unique; and (2) whether the loss of the discrete population segment would result in a significant gap in the range of the species. In the southern DPS some unknown portion of the Yellow Sea breeding concentration (Liaodong Bay) and all or nearly all seals breeding in Peter the Great Bay whelp and nurse on shore. In Peter the Great Bay, pups born ashore have been observed to enter the water prior to weaning, a behavior that is not typical among pups born on ice. Although it is not clear how long these behaviors have been occurring within the southern segment of the species' range, they may reflect responses or adaptations to changing conditions at the range extremes, and their uniqueness may provide insights about the resilience of the species to the effects of climate warming. In addition, the spotted seal is the only phocid (true seal) species inhabiting the waters of the Yellow Sea and Sea of Japan; whereas, four to five phocid species overlap within the remainder of the range of the spotted seal. Finally, the southern DPS extends over a vast area that includes two concentration areas of spotted seal breeding. Loss of this population segment would result in a substantial contraction of the overall extent of the range of the spotted seal.

In summary, given the best scientific and commercial data available, we conclude that the southern population segment of the spotted seal is both discrete and biologically and ecologically significant and should therefore be considered a DPS under the ESA. We refer to this population segment as the southern DPS throughout this final rule.

Status of the Southern DPS of the Spotted Seal

Several factors make it difficult to accurately assess spotted seals' abundance and trends. The remoteness and dynamic nature of their sea ice habitat along with their broad distribution and seasonal movements make surveying spotted seals expensive, highly unpredictable, and logistically challenging. Additionally, the species' range crosses political boundaries, and there has been limited international cooperation to conduct range-wide surveys. Details of survey methods and data are often limited or have not been published, making it difficult to judge the reliability of the reported numbers. Logistical challenges also make it difficult to collect the necessary behavioral data to make proper refinements to seal counts. Survey data were often inappropriately extrapolated to the entire survey area based on seal densities and ice concentration estimates without behavioral research to determine factors affecting habitat selection. For example, no suitable behavioral data have been available to correct for the proportion of seals in the water at the time of surveys. Spotted seal haul-out behavior likely varies based on many factors such as time of year and time of day, daily weather conditions, age and sex.

With these limitations in mind, the best scientific and commercial data available indicate that the population size of spotted seals in the Yellow Sea (Liaodong Bay) increased from about 7,100 in 1930 to a maximum of 8,137 in 1940. The population then declined over the next 4 decades to a minimum of 2,269 in 1979, before increasing again to about 4,500 in 1990. Despite conservation efforts by the Chinese and South Korean Governments, the Liaodong Bay population continued to decline to around 800 individuals by 2007, which is the current estimate for this population. The decline in the population during the 20th century has been attributed to over-hunting and habitat destruction (Won and Yoo, 2004).

Historical harvest records suggest that there were probably several thousand spotted seals in Peter the Great Bay in the Sea of Japan at the end of the 19th century. Abundance likely decreased considerably until the 1930s as the human population and hunting increased in this region. Shipboard surveys conducted in 1968 placed the spotted seal population at roughly several hundred individuals. Recent year-round studies have placed the most current estimate at about 2,500 spotted seals that inhabit Peter the Great Bay in the spring, producing about 300 pups annually, and now reproducing on shore rather than on ice.

Summary of Factors Affecting the DPS

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, if a species is endangered or threatened because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence. In making this finding, we considered the best scientific and commercial data available regarding the status and trends of the southern DPS. These factors are discussed below. As mentioned above, because there is little or no information to support a quantitative assessment of the primary threats to spotted seals, our risk assessment was primarily qualitative and based upon expert opinion of the BRT members.

Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The main concern about the conservation status of the southern DPS stems from observed changes in its sea ice habitat which are likely the result of the warming climate and, more so, that the scientific consensus projections are for continued and perhaps accelerated warming and sea ice decline in the foreseeable future. A second related concern is the modification of habitat by ocean acidification, which may alter prey populations and other important aspects of the marine ecosystem. A reliable assessment of the future conservation status of the southern DPS requires a focus on projections of specific regional conditions, especially sea ice.

For the Sea of Japan and Yellow Sea, current global climate models for sea ice do not perform satisfactorily due to model deficiencies and the small size of the region compared to the spatial resolution of the climate models (Boveng *et al.*, 2009). As a result, inferences about future ice conditions in these areas were drawn indirectly from projections of air or sea surface temperatures, and thus have greater associated uncertainties than sea ice projections. In the BoHai Sea and Peter the Great Bay, ice thickness is likely to depend more on the thickness of in situ ice formation than in the Bering Sea and Sea of Okhotsk because smaller wind fetches and shorter durations of ice cover would be expected to cause less ridging and rafting. Projected warming in this region indicates that reliable annual ice formation is likely to cease by the latter half of the 21st century.

The southern DPS appears to have some capability to accomplish reproduction and molting on shore when ice is not available. However, pinnipeds are generally not well protected from predation when they are constrained by the necessity of maintaining a mother-pup bond; that is, when escape to the water may disrupt the bond or poses thermoregulation problems for the pup. Therefore, suitable space to reproduce on land is likely limited to offshore rocks and small islands without human habitation, which appear to be relatively scarce in the southern DPS. We conclude that the loss of sea ice habitat is a significant factor in our classification of the southern DPS as threatened.

Ocean acidification, a result of increased greenhouse gases such as carbon dioxide in the atmosphere, may impact spotted seal survival and recruitment through disruption of trophic regimes that are dependent on calcifying organisms. The nature and timing of such impacts are extremely uncertain. Because of spotted seals' apparent dietary flexibility, and acknowledging our present inability to predict the extent and consequences of acidification, we find this to be a threat with potential to have serious effects, but conclude that it does not contribute significantly to the status of the species for the foreseeable future. It is thus not significant to our conclusion to list the southern DPS of the spotted seal as threatened under the ESA.

Changes in spotted seal prey, anticipated in response to ocean warming and loss of sea ice and, potentially, ocean acidification, have the potential for negative impacts on spotted seals, but the possibilities are complex. Some changes already documented in the Bering Sea and the North Atlantic Ocean are of a nature that could be beneficial to spotted seals. For example, several fish species, including walleye pollock (*Theragra chalcogramma*), a common spotted seal prey, have shown northward distribution shifts and increased recruitment in response to warming, at least initially. These ecosystem responses may have very long lags as they propagate through trophic webs. Apparent flexibility in spotted seal foraging locations and habits may make these threats a lower risk than the more direct impacts from changes in sea ice.

The above analyses of the threats associated with impacts of the warming climate on the habitat of the southern DPS, to the extent that they may pose risks to these seals, are expected to manifest throughout the current breeding and molting range (for sea ice related threats) or throughout the entire range (for ocean warming and acidification) of the DPS, since the finer scale spatial distribution of these threats is not currently well understood.

Over-Utilization for Commercial, Subsistence, Recreational, Scientific, or Educational Purposes

Recreational, scientific, and educational utilization of the southern DPS is currently at low levels and is not projected to increase to significant threat levels in the foreseeable future. The establishment of the Far Eastern Marine Reserve in Peter the Great Bay in 1978 prohibited hunting of spotted seals within the reserve, but it is unknown what level of hunting (if any) occurs outside the reserve's boundaries. Currently, there is not believed to be any commercial or subsistence take of spotted seals in the Yellow or Bohai seas, and the incidence of poaching is believed to be decreasing due to strengthened monitoring and enforcement. We therefore find that this factor does not contribute significantly to the status of the southern DPS or to our conclusion to list the southern DPS of the spotted seal as threatened under the ESA.

Diseases, Parasites, and Predation

A variety of pathogens (or antibodies), diseases, helminths, cestodes, and nematodes have been found in spotted seals. The prevalence of these agents is not unusual among seals, but whether there is an associated population-level impact is unknown. There has been speculation about increased risk of outbreaks of novel pathogens or parasites in marine systems as climate-related shifts in species distributions lead to new modes of transmission. However, no examples directly relating climate change to increased severity or prevalence of disease have been documented. Some types of diseases may decrease in severity or prevalence with increasing temperature. Therefore, it is not currently possible to predict the consequences of climate warming on disease or pathogen biodiversity in general or on spotted seal viability in particular.

There is little or no direct evidence of significant predation on spotted seals, and they are not thought to be a primary prey of any predators. However, predation risk could increase if loss of sea ice requires spotted seals to spend more time in the water or more time on shore, but predator distributions and behavior patterns may also be subject to climate-related changes, and the net impact to spotted seals cannot be predicted.

Inadequacy of Existing Regulatory Mechanisms

There are currently no effective mechanisms to regulate global GHG emissions, which are contributing to global climate change and associated modifications to spotted seal habitat. The risk posed to the southern DPS due to the lack of mechanisms to regulate GHG emissions is directly correlated to and difficult to distinguish from the risk posed by the effects of these emissions. The projections we used to assess risks from GHG emissions were based on the assumption that no regulation will take place (the underlying IPCC emissions scenarios were all "non-mitigated" scenarios). Therefore, the lack of mechanisms to regulate GHG emissions is already included in our risk assessment. Still, we recognize that the lack of effective mechanisms to regulate global GHG emissions is contributing to the risks posed to the southern DPS by these emissions.

Inadequacy or lack of stringency of mechanisms to regulate oil and gas activities in the Yellow Sea may be a similarly relevant factor regarding the cumulative risk faced by the southern DPS. However, large oil spill events are infrequent, and the ability to respond to them depends on a variety of factors, including timing, location and weather.

Other Natural or Human Factors Affecting the Species' Continued Existence

Spotted seals may be adversely affected by exposure to certain pollutants. Pollutants such as organochlorine compounds and heavy metals have been found in high concentrations in some Arctic phocids. Butyltin (BT) compounds are used as antifouling agents in ship bottom paints. They are retained in all tissues, though largely in the liver rather than the blubber where polychlorinated biphenyls (PCBs) and dichloro-diphenyl-trichloroethane (DDT) accumulate. BTs have been found in spotted seals, and some studies suggest marine mammals may have difficulty metabolizing these compounds. Research has also found persistent organochlorine pollutants (POPs), including flame retardant compounds like PBDEs as well as DDTs, PCBs, and perfluorinated contaminants (PFCs) in spotted seals.

We do not believe organochlorine levels are affecting ice seal populations at this time. We have no data or model predictions of levels expected in the foreseeable future. However, current levels should be used as a baseline for future research as concentrations in surrounding Arctic regions continue to rise. Climate change has the potential to increase the transport of pollutants from lower latitudes to the Arctic through changes in ocean current patterns, highlighting the importance of continuing to monitor spotted seal contaminant levels.

We note that most spotted seal contaminant research has been done in the Bering Sea and coastal areas around Hokkaido, Japan. Information about pollutants in water and sediments in the range of the southern DPS was used to draw inferences about potential risk from contaminants. Due to low water exchange and continued exposure to pollution, it is likely that high levels of contaminants would be found in seals of the Yellow Sea. However, we do not have any information to conclude that there are any population-level effects from contaminant exposure.

As discussed above, oil and gas activities have the potential to adversely affect spotted seals. As far as is known, spotted seals have not been affected by oil spilled as a result of industrial activities even though such spills have occurred in spotted seal habitat. Oil and gas development in the Sea of Okhotsk resulted in an oil spill in 1999, which released about 3.5 tons of oil. Also, in December 2007 approximately 10,500 tons of crude oil spilled into the Yellow Sea offshore of South Korea's Taean Peninsula from a tanker. The size of the oil spill was about one-fourth that of the Exxon Valdez spill in 1989, and was the largest in Korean history. It is unknown how many seals may have been affected by this spill. Incidences of oil spills are expected to increase with the on-going increase in oil and natural gas exploration/development activities in the Bohai and Yellow seas. Accompanying growth in tanker and shipping traffic could further add to the oil spill potential. According to experts in China, the threat of future oil spills remains high.

Though the probability of an oil spill affecting a significant portion of the southern DPS in the foreseeable future is low, the potential impacts from such a spill could be significant. The potential impacts would be greatest when spotted seals are relatively aggregated. Such an event in the Bohai Sea could be particularly devastating to the southern DPS of spotted seals. Given the very low abundance of the southern DPS and the possible consequences of a large oil spill to these seals, we considered this factor to be significant in our classification of the southern DPS as threatened.

Potentially significant interactions with commercial fisheries may pose significant risks, as well. Mortality of spotted seals incidental to fishery activities has been reported in both the Yellow Sea and Peter the Great Bay. The estimated level of fishery bycatch reported by researchers for spotted seals in Peter the Great Bay would be unsustainable for this population, and has been implicated as possibly limiting its growth.

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires us to consider efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts would include measures by Native American tribes and organizations, local governments, and private organizations. Also, Federal, tribal, state, and foreign recovery actions (16 U.S.C. 1533(f)), and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying these efforts, under the ESA and our Policy on the Evaluation of Conservation Efforts (PECE) (68 FR 15100; March 28, 2003), we must evaluate the certainty of an effort's effectiveness on the basis of whether the effort or plan: Establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; is likely to be implemented; and is likely to improve the species' viability at the time of the listing determination.

Several conservation efforts have been undertaken by foreign nations specifically to protect spotted seals within the southern DPS. These include: (1) Russia has established the Far Eastern Marine Reserve in Russia's Peter the Great Bay, and the islands of the Reserve provide protection from human disturbance and suitable haul-out sites for spotted seals; (2) China's Liaoning provincial government has banned the hunting of spotted seals, and established two national protected areas for the protection of spotted seals in the Liaodong Bay area, including the Dalian National Spotted Seal Nature Reserve (though, in 2006, the Dalian Nature Reserve's boundaries were adjusted to accommodate industrial development); (3) spotted seals are listed in the Second Category (II) of the "State Key Protected Wildlife List" in China and listed as Vulnerable (V) in the "China Red Data Book of Endangered Animals"; (4) the spotted seal is designated a vulnerable species under the Wildlife Conservation Act of China (though, as of 2004, no conservation action, public awareness, or education programs have been carried out for the species in this region); and (5) in 2000, spotted seals were afforded protected status under the Wildlife Conservation Act of South Korea. Despite this protection, the Liaodong Gulf population, shared between China and Korea, continues to decline.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty aimed at protecting species at risk from international trade. CITES regulates international trade in animals and plants by listing species in one of its three appendices. Spotted seals are not listed under CITES.

The International Union for the Conservation of Nature (IUCN) Red List identifies and documents those species believed by its reviewers to be in need of conservation attention if global extinction rates are to be reduced, and is widely recognized as the most comprehensive, apolitical, global approach for evaluating the conservation status of plant and animal species. In order to produce Red Lists of threatened species worldwide, the IUCN Species Survival Commission draws on a network of scientists and partner organizations, which uses a standardized process to determine species' risks of extinction. However, the IUCN Red List criteria differ from the listing criteria provided by the ESA. Because current abundance and population trends are unknown, the spotted seal is currently classified as "Data Deficient" on the IUCN Red List.

There are no known regulatory mechanisms that effectively address the factors believed to be contributing to reductions in sea ice habitat at this time. The primary international regulatory mechanisms addressing GHG emissions and global warming are the United Nations Framework Convention on Climate Change and the Kyoto Protocol. However, the Kyoto Protocol's first commitment period only sets targets for action through 2012. There is no regulatory mechanism governing GHG emissions in the years beyond 2012. The United States, although a signatory to the Kyoto Protocol, has not ratified it; therefore, the Kyoto Protocol is non-binding on the United States.

We are not aware of any formalized conservation efforts for spotted seals that have yet to be implemented, or which have recently been implemented, but have yet to show their effectiveness in removing threats to the species. There is no certainty that the conservation efforts analyzed will be effective in altering the status of the southern DPS. Therefore, our analysis of the efforts to protect the spotted seal does not affect our determination regarding the threatened status of the southern DPS. Based on the best scientific and commercial data available, including the status review report, and consideration of section 4(a)(1) of the ESA and the listing regulations, we find that the southern DPS is likely to become an endangered species within the foreseeable future and should be listed as a threatened species.

Final Listing Determination

We have reviewed the status of the southern DPS of the spotted seal, considering the best scientific and commercial data available. We have reviewed threats to the southern DPS, as well as other factors, and given consideration to conservation efforts and special designations for spotted seals by states and foreign nations. In consideration of all of the threats and potential threats identified above, the assessment of the risks posed by those threats, the possible cumulative impacts, and the uncertainty associated with all of these, we draw the following conclusions: (1) Abundance estimates indicate the Liaodong Bay spotted seals have been significantly reduced from historical numbers, while the Peter the Great population appears to be below historical numbers though stable, possibly limited by fishery bycatch; (2) projected warming by mid-century indicates reliable ice formation will cease to occur in this region by the latter half of the 21st century; (3) there already is significant use of terrestrial habitat for whelping and nursing by the southern DPS of spotted seals; (4) overall, the southern DPS has been significantly reduced in number and now exists at abundance levels where additional loss would threaten this DPS through “small population” or demographic stochasticity effects; and (5) the continued viability of using terrestrial sites is unknown, but may be limited in area or predispose spotted seals to predation and other natural and anthropogenic effects. Therefore, we conclude that the southern DPS of the spotted seal is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and list it as threatened under the ESA.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 4(d) of the ESA directs the Secretary of Commerce (Secretary) to implement regulations “to provide for the conservation of [threatened] species” that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(g) also prohibits violations of protective regulations for threatened species implemented under section 4(d). Although China, South Korea, and Russia have designated special conservation status for spotted seal populations and portions of their range within the southern DPS, it is uncertain whether these and other conservation measures analyzed will be effective in altering the status of this DPS. Therefore, based on the status of the southern DPS and its conservation needs, we conclude that the ESA section 9 prohibitions are necessary and advisable to provide for its conservation. NMFS is promulgating, by way of this final rule, protective regulations pursuant to section 4(d) for the southern DPS of the spotted seal to include all of the prohibitions in Section 9(a)(1).

Sections 7(a)(2) and (4) of the ESA require Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Sections 10(a)(1)(A) and (B) of the ESA provide us with authority to grant exceptions to the ESA's Section 9 “take” prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets spotted seals. Section 10(a)(1)(B) incidental take permits are required for non-Federal activities that may incidentally take a listed species in the course of an otherwise lawful activity.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, we and the USFWS published a series of policies regarding listings under the ESA, including a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272). The intent of this policy is to increase public awareness of the effect of our ESA listing on proposed and ongoing activities within the species' range. We identify, to the extent known, specific activities that will be considered likely to result in violation of section 9, as well as activities that will not be considered likely to result in violation. Because the southern DPS occurs outside the jurisdiction of the United States, we are presently unaware of any activities that could result in violation of section 9 of the ESA; however, because the possibility for violations exists we will maintain the section 9 protection.

Critical Habitat

Critical habitat is not to be designated within foreign countries or in other areas outside U.S. jurisdiction (50 CFR 424.12(h)). Because the known distribution of the southern DPS occurs in areas outside the jurisdiction of the United States, no critical habitat will be designated as part of the listing action.

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA in section 4(b)(1)(A) restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v *Andrus,* 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions (see also NOAA Administrative Order 216–6.).

Executive Order (E.O.) 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt State law or impose substantial direct compliance costs on State and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175—Consultation and Coordination with Indian Tribal Governments—outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

We have determined the listing action will not have tribal implications or affect any tribal governments or issues. The southern DPS does not occur within Alaska, and therefore is not hunted by Alaskan Natives for traditional use or subsistence purposes.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://www.fakr.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: October 14, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, in the table, add paragraph (a)(3) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species[1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(a) * * *				
(3) Southern DPS—Spotted Seal.	*Phoca largha*	The southern DPS includes all breeding populations of spotted seals south of 43 degrees north latitude in the Pacific Ocean.	[*Insert FEDERAL REGISTER page citation]; 10/22/2010*.	NA.
*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement; *see* 61 FR4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement; *see* 56 FR 58612, November 20, 1991).

* * * * *

■ 3. In Subpart B of part 223, add § 223.211 to read as follows:

§ 223.211 Southern DPS of spotted seal.

The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species shall apply to the Southern Distinct Population Segment of the spotted seal listed in § 223.102(a)(3).

[FR Doc. 2010–26764 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 75, No. 204

Friday, October 22, 2010

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[Docket No. PRM–26–5; NRC–2010–0304]

Anthony R. Pietrangelo on Behalf of the Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated September 3, 2010, which was filed with the NRC by Anthony R. Pietrangelo on behalf of the Nuclear Energy Institute (NEI). The petition was docketed by the NRC on September 13, 2010, and has been assigned Docket No. PRM–26–5. The petitioner requests that the NRC amend its regulations regarding its fitness for duty programs to refine existing requirements based on experience gained since the regulations were last amended in 2008.

DATES: Submit comments by January 5, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2010–0304 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, *see* "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0304. Address questions about NRC dockets to Carol Gallagher, telephone 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (Telephone 301–415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–492–3667.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC, including the incoming petition for rulemaking (ADAMS Accession No. ML102590440), are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

Federal Rulemaking Web Site: Public comments and supporting materials related to this action can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0304.

Background

On March 31, 2008, the NRC published a final rule (73 FR 16965) that amended its regulations governing its fitness for duty programs at 10 CFR Part 26 (Fitness for Duty rule). The rule was corrected in an amendment dated August 3, 2009 (74 FR 38326). The requirements of the rule became effective on April 30, 2008, with the implementation of Subpart A deferred until March 31, 2009. Licensees and other applicable entities were required to implement the requirements of Subpart I of 10 CFR Part 26 no later than October 1, 2009.

Anthony R. Pietrangelo, on behalf of NEI (petitioner), submitted a petition for rulemaking dated September 3, 2010, and requests that the NRC revise its regulations as they relate to the fitness for duty programs. Specifically, the petitioner requests that the NRC amend Subparts A and I of 10 CFR Part 26. The petitioner states that initial experience, including survey data across the industry, indicates that implementation of the Fitness for Duty rule has resulted in unintentional consequences that have diminished the safety benefits of the rule.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802, and the petition has been docketed as PRM–26–5. The NRC is requesting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner believes that the greatest contributor to the unintended consequences of the Fitness for Duty rule lies within the prescriptive requirements for minimum days off (MDO) that appear in 10 CFR 26.205(d)(3), (d)(4), (d)(5), and (d)(6). The petitioner states that the current requirements have created an undue level of complexity and inflexibility in managing worker fatigue, and requests that the NRC replace its MDO requirements at 10 CFR 26.205(d) with a performance-based objective. The petitioner proposes eliminating the MDO requirements addressed in 10 CFR 26.205(d)(3) through (d)(6).

The petitioner also proposes performing the actual hours worked assessment required by 10 CFR 26.205(e) on a more frequent quarterly basis as opposed to annually, and to perform the averaging over the previous quarter as opposed to over a shift cycle. The petitioner proposes that 10 CFR 26.205(e)(1)(i) be amended to establish a performance objective of an average of 54 hours per week (when not in a site outage, security outage, or increased threat condition), and any hours exceeding this objective would continue to be entered into a corrective action program.

Other changes that the petitioner proposes include:

• The elimination of the definitions of shift cycle, and 8-, 10-, and 12-hour shift schedules;

• The elimination of the outage duration of 60 days;

• The elimination of the force-on-force tactical exercise exception at 10 CFR 26.207(b);

• The elimination of the word "unscheduled" in the discussion of incidental duties at 10 CFR 26.205(b)(5);

• The addition of a new exception at 10 CFR 26.207(e) to address the suspension of work hours due to acts of nature or disasters that restrict access to the site by relief personnel;

• The modification of the exception for plant emergencies in 10 CFR 26.207(d) so that it applies as long as emergency facilities are activated in accordance with the licensee's emergency plan or implementing procedures; and

• The proposed change to the definition of "unit outage," as submitted by the Professional Reactor Operator Society in a petition for rulemaking dated October 16, 2009 (PRM–26–3) (74 FR 62257), and modified in a letter from NEI dated February 9, 2010.

The petitioner believes that the implementation of the Fitness for Duty rule has resulted in a number of unintended consequences (numerous examples are cited in the petition) that have diminished the safety benefits of the rule. The petitioner believes that the petition addresses these consequences by proposing amendments that will make the requirements more performance-based, resulting in improved flexibility in work scheduling while maintaining adequate provisions to protect against worker fatigue.

Dated at Rockville, Maryland, this 18th day of October 2010.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–26715 Filed 10–21–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0936; Airspace Docket No. 10–AEA–23]

Proposed Amendment of Class E Airspace and Revocation of Class E Airspace; Easton, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E surface airspace and airspace 700 feet above the surface, and remove Class E airspace designated as an extension to Class D airspace at Easton, MD. The Easton Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed for Easton Airport/Newnam Field. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0936; Airspace Docket No. 10–AEA–23, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule 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–2010–0936; Airspace Docket No. 10–AEA–23) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments 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 Docket No. FAA–2010–0936; Airspace Docket No. 10–AEA–23." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify Class E surface airspace and Class E airspace extending upward from 700 feet above the surface to accommodate new SIAPs developed for Easton Airport/Newnam Field, Easton, MD, as the Easton NDB has been decommissioned. This eliminates the need for Class E airspace designated as an extension to Class D surface area, and, therefore, would be removed for the continued safety and management of IFR operations

Class E airspace designated as surface areas, Class E airspace designated as extensions to Class D airspace, and Class E airspace extending upward from 700 feet above the surface are published in Paragraph 6002, 6004, and 6005 respectively of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend the Class E airspace area at Easton Airport/Newnam Field, Easton, MD.

Lists 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 CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AEA MD E2 Easton, MD [AMENDED]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.0-mile radius of the Easton Airport/Newnam Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously purblished in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a class D surface area.

* * * * *

AEA MD E4 Easton, MD [REMOVED]

* * * * *

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

* * * * *

AEA MD E5 Easton, MD [AMENDED]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of the Easton Airport/Newnam Field.

Issued in College Park, Georgia, on October 12, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26684 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1010 Airspace Docket No. 10–AEA–24]

Proposed Amendment of Class E Airspace; Charleston, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E Airspace at Charleston, WV, to accommodate the additional airspace needed for the holding pattern associated with the new Standard Instrument Approach Procedures (SIAPs) developed at Yeager Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–1010; Airspace Docket No. 10–AEA–24, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule 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–2010–1010; Airspace Docket No. 10–AEA–24) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments 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 Docket No. FAA–2010–1010; Airspace Docket No. 10–AEA–24." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Charleston, WV, to provide the controlled airspace necessary in support of the SIAPs developed for Yeager Airport, Charleston, WV. The existing Class E airspace extending upward from 700 feet above the surface would be modified for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Yeager Airport, Charleston, WV.

Lists 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 CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

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

* * * * *

AEA WV E5 Charleston, WV [AMENDED]

Yeager Airport, Charleston, WV

(Lat. 38°22′23″ N., long. 81°35′35″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Yeager Airport and within 8 miles northwest and 4 miles southeast of the 048° bearing from the airport extending from the 7-mile radius to 21.2 miles northeast of the airport.

Issued in College Park, Georgia, on October 12, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26685 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0992; Airspace Docket No. 10–ASO–36]

Proposed Amendment of Class E Airspace; Sturgis, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Sturgis, KY, as the Tradewater NDB Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed for the Sturgis Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0992; Airspace Docket No. 10–ASO–36, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule 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–2010–0992; Airspace Docket No. 10–ASO–36) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments 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 Docket No. FAA–2010–0992; Airspace Docket No. 10–ASO–36." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface for new SIAPs developed at Sturgis Municipal Airport, Sturgis, KY. Airspace reconfiguration is necessary due to the decommissioning of the Tradewater NDB and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005, of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Sturgis Municipal Airport, Sturgis, KY.

Lists 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 CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

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

* * * * *

ASO KY E5 Sturgis, KY [AMENDED]

Sturgis Municipal Airport, KY
(Lat. 37°32′30″ N., long. 87°57′16″ W.)

That airspace extending upward from the surface within a 6.5-mile radius of the Sturgis Municipal Airport and within 4 miles each side of the 183° bearing from the airport extending from the 6.5-mile radius to 9.9 miles south of the airport; and within 4 miles each side of the 003° bearing from the airport extending from the 6.5-mile radius to 10 miles north of the Sturgis Muncipal Airport.

Issued in College Park, Georgia, on October 12, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26571 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0838; Airspace Docket No. 10–AGL–13]

Proposed Establishment of Class E Airspace; Benton, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Benton, IL. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Benton Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0838/Airspace Docket No. 10–AGL–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0838/Airspace Docket No. 10–AGL–13." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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 Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Benton Municipal Airport, Benton, IL. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

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

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL IL E5 Benton, IL [New]

Benton Municipal Airport, IL

(Lat. 38°00′24″ N., long. 88°56′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Benton Municipal Airport.

Issued in Fort Worth, TX, on September 27, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26575 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0903; Airspace Docket No. 10–AWP–16]

Proposed Modification of Class E Airspace; Show Low, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Show Low, AZ to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Show Low Regional Airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport. This also would correct the name of the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0903; Airspace Docket No. 10–AWP–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0903 and Airspace Docket No. 10–AWP–16) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0903 and Airspace Docket No. 10–AWP–16". The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace at Show Low Regional Airport, Show Low, AZ. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAPs at the airport. This action would enhance the safety and management of IFR operations at the Airport. This also would correct the name of the airport from Show Low Municipal Airport to Show Low Regional Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Show Low Regional Airport, Show Low, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

AWP AZ E5 Show Low, AZ [Modified]

Show Low Regional Airport, AZ
(Lat. 34°15′56″ N., long. 110°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Show Low Regional Airport and within 3 miles each side of the 038° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 10 miles northeast of the airport, and within 2.1 miles each side of the 085° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 7.9 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at Lat. 34°35′00″ N., long. 109°51′00″ W.; to lat. 34°14′00″ N., long. 109°22′00″ W.; to lat. 33°49′00″ N., long. 110°36′00″ W.; to lat. 34°10′00″ N., long. 110°37′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on October 13, 2010.

Rob Henry,

Acting Manager, Operations Support Group, Western Service Center

[FR Doc. 2010–26579 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100222109–0471–01]

RIN 0648–AY35

Flower Garden Banks National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; Request for public comments; Public Availability of Draft Management Plan and Draft Environmental Assessment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to amend the regulations for the Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) to improve vessel and user safety, protect sanctuary resources from user impacts, clarify vessel pollution discharge language, and make other technical changes and corrections.

DATES: *Comments.* Comments on the proposed rule and the draft environmental assessment must be received no later than January 20, 2011.

Public Hearing. A public hearing will take place on Thursday, December 9, 2010 from 4 p.m. to 8 p.m. at the Flower Garden Banks National Marine Sanctuary office building at 4700 Avenue U, Building 216, Galveston, TX 77551.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Electronic Submission:* Submit electronic comments to docket number NOAA–NOS–2010–0208 via the Federal e-Rulemaking Portal at *http://www.regulations.gov.*
- *Mail:* George Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

Instructions: All comments received are a part of the public record and will be generally posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NOAA will accept anonymous comments (for electronic comments submitted via the Federal e-Rulemaking Portal, enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Copies of the draft management plan, draft environmental assessment, and this **Federal Register** notice are available for public review and download at *http://flowergarden.noaa.gov/management/mpr.html.*

FOR FURTHER INFORMATION CONTACT: George Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

E-mail: fgbnmsmanagementplan@noaa.gov.

Phone: (409) 621–5151.

SUPPLEMENTARY INFORMATION:

I. Background

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as a national marine sanctuary areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect sanctuary resources, such as coral reefs, and cultural resources, such as historical shipwrecks, historic structures, and archaeological sites.

NOAA issued a notice of designation for Flower Garden Banks National Marine Sanctuary to Congress and simultaneously published the notice (together with implementing regulations) in the **Federal Register** in 1991 (56 FR 63634, Dec. 5, 1991). The sanctuary was subsequently designated by Congress and signed into law by the President, effective January 17, 1992 (Pub. L. 102–251).

The Flower Garden Banks National Marine Sanctuary originally consisted of two areas known as East and West Flower Garden Banks (56 FR 63634; Pub. L. 102–251). Congress added Stetson Bank to the sanctuary in 1996 (Pub. L. 104–283). These three areas are located in the northwestern Gulf of Mexico and are described as underwater hills formed by rising domes of ancient salt. The banks range in depth from 55 feet to nearly 500 feet, providing conditions that support several distinct habitats, including the northern-most coral reefs in the continental United States. These and similar formations throughout the northern Gulf of Mexico provide the foundation for essential habitat for a variety of species. The combination of location and geology makes the Flower Garden Banks an extremely productive and diverse ecosystem, but it also presents a unique set of challenges for managing and protecting its natural wonders.

The FGBNMS regulations implementing the designation were first published on December 5, 1991 (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664) and were later amended with an effective date of January 22, 2001 to include Stetson Bank in the boundaries of the Flower Garden Banks National Marine Sanctuary consistent with Public Law 104–283 (65 FR 81176). The regulations set forth the sanctuary boundaries; prohibited a relatively narrow range of activities; established requirements applicable to certain activities; and established permit and certification procedures, among other things. To prevent injuries to corals from anchoring, NOAA amended the FGBNMS regulations in 2001 (66 FR 58370) to conform to the regulations adopted by the International Maritime Organization and prohibit all anchoring and mooring in the sanctuary with the exception that vessels 100 feet (30.48 meters) and under in length are permitted to moor at sanctuary mooring buoys.

The ONMS is required by NMSA Section 304(e) to periodically review sanctuary management plans to ensure that sanctuary management continues to best conserve, protect, and enhance the nationally significant living and cultural resources at each site. Management plans generally outline regulatory goals, describe boundaries, identify staffing and budget needs, and set priorities and performance measures for resource protection, research and education programs. They also guide the development of future management activities. Due to such review, NOAA has decided to update and revise the 1991 FGBNMS management plan to address recent scientific discoveries, advancements in managing marine resources, and new resource management issues.

The FGBNMS management plan review process began in October 2006 with the release of the *Flower Garden Banks National Marine Sanctuary State of the Sanctuary Report* and public meetings to obtain information about the public's interests and priorities for FGBNMS management. Subsequently, NOAA worked with the FGBNMS Advisory Council to prioritize issues and develop appropriate management strategies and activities for the preparation of a draft revised management plan. Based on this input, NOAA prepared a draft revised management plan that consists of six action plans: Sanctuary expansion, education and outreach, research and monitoring, resource protection, visitor use, and operations and administration. Pursuant to the National Environmental Policy Act, 42 U.S.C. 4331–4345 (NEPA), NOAA also prepared a programmatic environmental assessment to analyze the environmental impacts associated with the proposed management plan revision and this proposed rule.

The resource protection and visitor use action plans in the draft management plan include several strategies that would require changes to the FGBNMS regulations. NOAA therefore is proposing to amend the FGBNMS regulations to make several substantive changes to reflect these new strategies. The changes would address conflicts between different types of visitors, protection of rays and whale sharks, and vessel discharge and deposits. The changes would also eliminate outdated references to paragraphs that no longer exist, update cross references to other paragraphs, and establish definitions for various new terms adopted in this proposed rulemaking.

II. Summary of the Proposed Revisions

This rulemaking proposes to take the following five actions:

1. Require any vessel moored in the sanctuary to exhibit the blue and white International Code flag "A" ("alpha" dive flag) whenever a SCUBA diver is in the water and remove the "alpha" dive flag once all divers exit the water and return on board the vessel;

2. Clarify that the prohibition on discharge or deposit of any material or other matter applies to discharges and deposits "from within or into" the sanctuary; and clarify that the exception to the discharge/deposit prohibition for fish, fish parts, or chumming materials (bait) applies only to discharges or deposits made during the conduct of fishing with conventional hook and line gear within the sanctuary;

3. Eliminate the exception that allows for the discharge or deposit of biodegradable effluents in the sanctuary; eliminate the phrase "routine vessel operation"; clarify that the exception applies only to discharge or deposit of clean vessel deck wash down, clean vessel engine cooling water, clean bilge water, or anchor wash, and clean effluent from an operable Type I or II marine sanitation device (MSD); require vessel operators to lock all MSDs in a manner that prevents discharge or deposit of untreated sewage; and add definitions for the terms "clean" and "harmful matter" to provide quality requirements for discharges and deposits;

4. Add a new prohibition on killing, injuring, attracting, touching, or disturbing a ray or whale shark; and add definitions for the terms "attract or

attracting" and "disturb or disturbing a ray or whale shark"; and

5. Make technical corrections to eliminate outdated references of paragraphs that no longer exist in the regulations; and update cross references to other paragraphs.

A. Dive Flag Requirements

NOAA proposes to require any vessel engaged in diving activity within the FGBNMS to clearly exhibit the blue and white International Code flag "A" ("alpha" dive flag) whenever a SCUBA diver from that vessel is in the water and remove the "alpha" dive flag once all SCUBA divers exit the water and return on board the vessel. The U.S. Coast Guard (USCG) requires any vessel in Federal waters engaged in diving operations to use a rigid replica of the "alpha" dive flag of a size not less than 1 meter in height, when that vessel is of a size that makes it impracticable to exhibit all lights and shapes prescribed in USCG regulations (33 CFR 83.27). The USCG also requires the vessel operator to take measures to ensure all-round visibility of the "alpha" dive flag. Because the entire sanctuary is within Federal waters, NOAA proposes to require the use of the "alpha" dive flag, whenever a vessel is engaged in diving activity in the sanctuary. This regulation would apply to all vessels engaged in diving operations, not just to vessels of a size that makes it impracticable to exhibit all lights and shapes prescribed in USCG regulations.

B. General Discharge/Deposit Prohibition

To ensure consistency among the regulations for other sanctuaries, this rule clarifies that the prohibition on discharging or depositing any material or other matter applies to discharges and deposits "from within or into" the sanctuary. Adding the word "into" is intended to clarify that the prohibition does not only apply to discharges and deposits originating in the sanctuary. The prohibition also applies, for example, to discharges and deposits above the sanctuary. The rule also clarifies that the exception to the prohibition on discharges or deposits for fish, fish parts, or chumming materials (bait) applies only to discharges made during the conduct of fishing with conventional hook and line gear within the sanctuary. This rule prevents the dumping of fish, fish parts, or chumming materials at all other times except for during fishing with conventional hook and line gear within the sanctuary.

C. Vessel Discharges and Deposits

NOAA proposes to amend the FGBNMS prohibition on discharges or deposits from vessels. This rule clarifies that the FGBNMS regulation (§ 922.122 (a)(3)(i)(B)) for discharge or deposit of vessel waste generated by marine sanitation devices approved in accordance with the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.,* was not intended to allow the discharge of untreated sewage (*e.g.,* discharges from Type III MSDs) into the sanctuary. Type I and Type II MSDs treat sewage, whereas Type III MSDs store waste until it is removed at designated pump-out stations on shore or discharged at sea. Therefore, NOAA proposes to modify the FGBNMS regulations to clarify that only discharges or deposits of effluent from properly functioning Type I or II MSDs are allowed in the sanctuary.

In addition, NOAA proposes to require all MSDs be locked in a manner that prevents discharge or deposit of untreated sewage. The requirement that MSDs be locked (*e.g.,* locking closed an overboard discharge valve) helps prevent both intentional and unintentional overboard discharges of untreated sewage within the sanctuary. The revised regulations would allow vessels to discharge clean effluent from a Type I or Type II MSD. The use of the word "clean" would replace the use of the word "biodegradable" in the discharge regulations. Under the revised regulations, "clean" means not containing detectable levels of harmful matter; and "harmful matter" means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 (§ 922.131) pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

NOAA decided to remove the term "biodegradable" from the regulations because NOAA determined that the term has no recognized legal definition, and products are labeled "biodegradable" without reference to a fixed set of standards. NOAA could define the term; however, it would not be reasonable to expect a vessel operator to know which of the wide spectrum of products labeled as "biodegradable" meet NOAA's definition. Defining the terms "clean" and "harmful matter" provide vessel operators with a definition of what is prohibited, and focuses on the types of contaminants that pose the greatest threat to water quality within the sanctuary.

Since the phrase "routine vessel operations" lacks a legal definition and potentially raises enforcement and compliance issues, NOAA proposes to replace the exception for "water generated from routine vessel operations" with the requirement that clean deck wash down, clean cooling water, and clean bilge water all be free of detectable levels of "harmful matter" as defined by the regulations. This facilitates compliance by clearly identifying what types of discharges and deposits from routine vessel operations are permitted under the regulations, and focuses on those contaminants that pose the greatest threat to water quality. The requirement also makes the discharge regulations consistent with recent requirements implemented for other national marine sanctuaries.

D. Killing, Injuring, Attracting, Touching or Disturbing a Ray or Whale Shark

Approximately 20 species of sharks and rays have been documented at the Flower Garden and Stetson Banks; some are seasonal, others frequent the sanctuary year-round. During the winter months, spotted eagle rays (*Aetobatus narinari*) are visitors to all three banks. The reason for the seasonality of their visits is unclear, but their occurrence is quite predictable. Summer months usually bring whale sharks (*Rhincodon typus*) to the area. These filter-feeding creatures can reach over 30 feet (9 meters) in length. Manta rays (*Manta birostris*) and the very similar-looking mobula rays (*Mobula spp.*) are regular visitors to the sanctuary throughout the year. At least 58 different individual manta rays have been documented and identified by distinctive markings on their undersides. Recent acoustic tracking of the manta rays has revealed that the mantas are moving between the three banks of the sanctuary.

Whale sharks and rays are transient creatures and migrate between areas for feeding and mating. The sanctuary is a place where rays and whale sharks should be protected from human-induced death, injury or other harm. Divers can physically harm rays and whale sharks by attracting, touching, riding, or pursuing these animals. Their external sensory systems are affected by unnatural activation, which has unknown consequences on their ability to sense their environment. These animals may actively avoid diver interaction by changing direction or diving, and may exhibit violent shuddering. When these responses occur, rays and whale sharks expend energy in ways other than feeding and other natural activities, which can affect their overall health. In addition, people can cause injury to the skin of these animals through touching, and can expose the animals to other potential injuries. Finally, attracting rays and whale sharks changes their behavior and may negatively impact their health. As an example of how rays have been affected by divers, stingrays in the Cayman Islands have developed shoaling behavior and altered feeding habits, as well as exhibit skin abrasions from handling. Scientific citations regarding the concerns and examples here can be found in the references section of the draft environmental assessment (*see* **ADDRESSES** for instructions on obtaining a copy).

These species are not listed under the Endangered Species Act (ESA) or designated as depleted under the Marine Mammal Protection Act (MMPA) because they are not mammals. Therefore, they are not protected in the same manner as threatened or endangered species protected under the ESA or depleted marine mammals protected under the MMPA. NOAA proposes to strengthen the protection of rays and whale sharks from harm (or likelihood thereof) in the sanctuary by prohibiting killing, injuring, attracting, touching, or disturbing these animals. The intent is to prevent human interaction with rays and whale sharks in such a manner that the animals change direction, dive away from human interaction, shudder, or have any other adverse behavioral or physical reaction. In order to make this new prohibition as clear as possible, NOAA is proposing to add definitions for the terms "attract or attracting" and "disturb or disturbing a ray or whale shark" in § 922.121.

E. Technical Corrections

NOAA proposes to make a technical correction to eliminate the references in the regulations to § 922.122(a)(iv), because that clause no longer exists. This subparagraph references a specific prohibition on vessel anchoring activities that was eliminated from the FGBNMS regulations in 2001 (66 FR 58370).

NOAA also proposes to update cross references in § 922.122(a) that may change as a result of the re-designation of paragraphs associated with this proposed rule.

III. Classification

A. National Environmental Policy Act

NOAA has prepared a draft programmatic environmental assessment to analyze the potential environmental impacts of this proposed rulemaking. Copies are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final programmatic environmental assessment and preamble to the final rule.

B. Executive Order 12866: Regulatory Impact

Under Executive Order 12866, if the proposed regulations are "significant" as defined in section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

All of the proposed actions would occur in the Exclusive Economic Zone beyond State jurisdiction. NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

D. Paperwork Reduction Act

This rule does not contain any new information or revisions to the existing information collection requirement that was previously approved for this rule by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows: *Regulations regarding dive flag requirements.* NOAA proposes to require any vessel engaged in diving activities within FGBNMS clearly exhibit the blue and white International Code flag "A" ("alpha" dive flag) whenever a SCUBA diver is in the water and remove the "alpha" dive flag once all SCUBA divers exit the water and return on board the vessel. The SBA does not provide a category of business for recreational fishing or diving operators in their list of size standards for small businesses; however, it provides a category for "sporting goods store" and "marina", which can be used to approximate the size standards for the businesses affected by this rule. According to the SBA, a small business in the sporting goods or marina industries is one that has annual receipts of less than $7 million. Sanctuary staff identified three local businesses that currently offer trips to FGBNMS for customers from the Galveston, TX area that would be affected by the flag requirement. Each of these businesses falls under the SBA's definition of a "small entity" for the purposes of this action. It is possible that other diving businesses based from other areas in Texas and Louisiana might offer trips to FGBNMS, but this situation is unlikely given the availability of other dive sites closer to these areas. The cost of complying with this requirement would be the cost of acquiring a blue and white International Code flag "A." This expense, even for the small entities affected, is a negligible one, and NOAA also considers the cost of exhibiting a flag negligible, particularly since many dive operators are already required to use the flag in coastal waters and therefore probably already own a flag. This proposed regulation would address a safety issue by reducing conflicts among users and is not expected to have any economic impact to these small businesses.

Regulation of Vessel Discharges/ Deposits. Small entities that may be affected by the vessel discharge regulation fall under three categories: Commercial fishing businesses, recreational fishing businesses, and non-consumptive (diving) charter businesses. According to the SBA, a small business in the commercial fishing industry is one that has annual receipts of less than $4 million. A small business in the recreational fishing or dive operator industry is estimated to have less than $7 million in annual receipts, as discussed above. The exact number of commercial and recreational fishing businesses that operate in FGBNMS is unknown and currently being investigated, but NOAA social scientists estimate that there are fewer than 15 small businesses in these three categories combined. Each of these businesses is considered a "small entity" based on the standards set out above. Significant adverse impacts are not expected to result for any of the sanctuary's small entities from the proposed prohibition on discharging or depositing any material or other matter from within or into the sanctuary because in the course of normal, lawful operations, no small entity activities are expected to produce such discharges/deposits. Additionally, this proposed regulation would except discharges/deposits likely to come from vessel-based small entities, including clean effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321 *et seq.*). This proposed regulation would also except clean vessel wash down, clean vessel engine cooling water, clean vessel engine exhaust, and fish, fish parts, or chumming materials (bait) used in or resulting from fishing with conventional hook and line gear within the sanctuary, provided that such later discharge or deposit is during the conduct of such fishing.

The proposed modification to the sanctuary's discharge/deposit regulation clarifying that discharges allowed from marine sanitation devices applies only to Type I and Type II marine sanitation devices would not introduce any new restrictions on the 15 or fewer small entities operating in the sanctuary, and would merely clarify the original intent of the sanctuary's discharge regulation. Most vessels large enough to support fishing or diving business to an offshore location such as FGBNMS have a marine sanitation device on board. All types of marine sanitation devices allow a vessel operator to either withhold discharges if they are not properly treated (Type III) or to treat wastewater prior to discharge (Type I and II); therefore this proposed regulation would not require a small entity to significantly alter its usual practices. To the extent that this clarification might affect customary, though illegal, sewage discharge practices of some small entities, the adverse affect on those operations is expected to be less than significant because such discharges may legally occur beyond the sanctuary's boundary, or vessel sewage may be pumped out and disposed of at mainland ports and harbors. Additionally, some small entities may receive indirect benefits from this clarification, especially as it might pertain to preventing large volume discharges from larger vessels, since this prohibition may contribute to sustaining favorable environmental quality in their area of operation.

The proposed modification to the sanctuary's discharge/deposit regulation that would specify that discharging or depositing fish, fish parts, or chumming materials (bait) may occur only during the conduct of fishing with conventional hook and line gear within the sanctuary is not expected to have a significant adverse impact on small entities, because it would not apply to the conduct of such fishing within the sanctuary. NOAA believes no small entities currently discharge fish or fish parts in the sanctuary as a result of fishing outside the sanctuary boundaries, so no small businesses would be affected by this proposed regulation. In some areas "chumming" is a practice that has been associated with non-consumptive recreational activities (*e.g.,* attracting sharks for photography), or in some cases research activities (*e.g.,* attracting birds for study). NOAA believes that there are currently no small entities carrying on such activities in the sanctuary. Small businesses not engaged in fishing with conventional hook and line gear could apply for and, if appropriate, be granted a sanctuary permit (*e.g.,* research or education) to conduct this otherwise prohibited discharge/deposit.

Regulation to protect rays and whale sharks. NOAA proposes to increase protection of rays and whale sharks from harm and harassment by adding a prohibition on killing, injuring, attracting, touching, or disturbing these animals. As mentioned above, three small businesses currently operate vessels that allow customers the opportunity to swim and/or SCUBA dive with rays and whale sharks. NOAA believes that divers' experience of the sanctuary marine environment would not be diminished by this prohibition since swimming or diving near these animals would still be allowed under the proposed regulation. Because the divers' experience will not be significantly altered by these rules, NOAA anticipates no decreased demand for the services the affected small entities provide. Therefore, significant adverse economic impacts to small businesses are not expected to result from this proposed regulatory action even if the proposed regulation requires the companies to slightly alter their current practices.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

IV. Request for Comments

NOAA requests comments on this proposed rule and the draft environmental assessment for 90 days after publication of this notice.

Dated: October 19, 2010.

Christopher Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife management areas.

For the reasons discussed in the preamble, NOAA proposes to amend part 922, title 16 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Amend § 922.121 to add definitions of "Attract or attracting", "Clean", "Disturb or disturbing a ray or whale shark", and "Harmful matter" in alphabetical order to read as follows:

§ 922.121 Definitions.

* * * * *

Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (*e.g.,* surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (*e.g.,* swimmers, divers, boaters, kayakers, surfers).

Clean means not containing detectable levels of harmful matter.

Disturb or disturbing a ray or whale shark means to, or attempt to, ride, pursue, hunt, restrain, detain (no matter how temporarily), capture, collect, or conduct any other activity that disrupts or has the potential to disrupt any ray or whale shark in the Sanctuary by, for example, causing or threatening to cause the ray or whale shark to shudder or alter one or more of its natural behavioral traits or patterns.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

* * * * *

3. Amend § 922.122 as follows:

a. Add new paragraph (a)(2)(iii).

b. Revise paragraphs (a)(3)(i) introductory text, (a)(3)(i)(A), (a)(3)(i)(B), and (a)(3)(i)(C).

c. Redesignate paragraphs (a)(7) through (10) as paragraphs (a)(8) through (11), respectively.

d. Add new paragraph (a)(7).

e. Revise paragraph (c).

f. Amend paragraphs (d), (e), (f), and (g) by removing the phrase "paragraphs (a)(2) through (10)" wherever it appears and adding in its place "paragraphs (a)(2) through (11)".

The additions and revisions read as follows:

§ 922.122 Prohibited or otherwise regulated activities

(a) * * *

(2) * * *

(iii) Mooring a vessel in the Sanctuary without clearly displaying the blue and white International Code flag "A" ("alpha" dive flag) whenever a SCUBA diver from that vessel is in the water or removing the "alpha" dive flag before all SCUBA divers exit the water and return back on board the vessel.

* * * * *

(3)(i) Discharging or depositing, from within or into the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary, provided that such discharge or deposit occurs during the conduct of such fishing within the Sanctuary;

(B) Clean effluent generated incidental to vessel use by an operable Type I or Type II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

* * * * *

(7) Killing, injuring, attracting, touching, or disturbing a ray or whale shark in the Sanctuary.

* * * * *

(c) The prohibitions in paragraphs (a)(2)(i), (a)(4), and (a)(11) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

* * * * *

§ 922.123 [Amended]

4. Amend § 922.123 (a) and (c) by removing the phrase "paragraphs (a)(2) through (10)" and adding in its place "paragraphs (a)(2) through (11)."

[FR Doc. 2010–26762 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–NK–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1450

Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed interpretive rule.

SUMMARY: The Consumer Product Safety Commission ("Commission" or "CPSC") is proposing this interpretive rule to interpret the term "public accommodations facility" as used in the Virginia Graeme Baker Pool and Spa Safety Act.

DATES: Written comments in response to this document must be received no later than December 21, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0102, 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 (preferably in five copies), disk, or CD–ROM submissions), 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 rulemaking. 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 comments or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara E. Little, Regulatory Affairs Attorney, Office of General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; *blittle@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001, ("VGB Act" or "Act") requires that drains in public pools and spas be equipped with ASME/ANSI A112.19.8 compliant drain covers, and that each public pool and spa with a single main drain other than an unblockable drain be equipped with certain secondary anti-entrapment systems. Section 1404(c) of the Act. The Act defines "public pool and spa" in relevant part as a "swimming pool or spa that is open exclusively to patrons of a hotel or other public accommodations facility." Section 1404(c)(2)(B)(iii) of the Act. The Act does not define the term "public accommodations facility."

In response to numerous inquiries regarding what constitutes a public accommodations facility under the VGB Act, the Commission published a proposed interpretive rule on the definition of "public accommodations facility" on March 15, 2010 (75 FR 12167). The proposed interpretive rule would interpret "public accommodations facility" to mean: "An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor."

CPSC received six comments on the proposed interpretive rule, including two comments from State health departments, one from the Tennessee Hospitality Association, one from an individual, one from a manufacturer, and one from members of Congress. CPSC staff prepared a draft final interpretative rule for the Commission's approval, but, on August 4, 2010, the Commission voted to withdraw the proposed interpretive rule and to direct CPSC staff to draft a new proposed interpretive rule with a 60 day comment period and interpreting "public accommodations facility" as "an inn, hotel, motel, or other place of lodging, including, but not limited to, rental units rented on a bi-weekly or weekly basis." This proposed interpretive rule is in response to the Commission's vote; elsewhere in this issue of the **Federal Register**, we have published a document announcing the withdrawal of the proposed interpretive rule that was published in the **Federal Register** March 15, 2010.

B. Legal Analysis

1. *Public Pool or Spa.* A public pool or spa open exclusively to patrons of a hotel or other public accommodations facility is only one category of public pools and spas under the VGB Act. The Act also defines a public pool and spa to include a swimming pool or spa that is:

- Open to the public generally, whether for a fee or free of charge (Section 1404(c)(2)(A) of the Act);
- Open exclusively to members of an organization and their guests (Section 1404(c)(2)(B)(i) of the Act);
- Open exclusively to residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area (other than a municipality, township, or other local government jurisdiction) (Section 1404(c)(2)(B)(ii) of the Act); and
- Operated by the Federal Government (or by a concessionaire on behalf of the Federal Government) for the benefit of members of the Armed Forces and their dependents or employees of any department or agency and their dependents (Section 1404(c)(2)(C) of the Act).

This proposed interpretive rule is limited to the interpretation of "public accommodations facility."

2. *Comparable Federal Statutes.* The term "public accommodation" is defined in several other Federal statutes in relevant part as "an inn, hotel, motel, or other place of lodging." (*See, e.g.,* the Americans with Disabilities Act (ADA), 42 U.S.C. 12181(7), defining "public accommodation" in relevant part as "an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor." *See also,* the Federal Fire Prevention and Control Act of 1974 (FFPCA), 15 U.S.C. 2201 *et seq.,* at section 2203(7); the Civil Rights Act (CRA), 42 U.S.C. 1981 *et seq.,* at section 2000(b).) The Commission intends to incorporate this language into its proposed definition for "public accommodations facility."

The ADA, FFPCA, and CRA exclude from the definition of public accommodation an establishment located within a building that contains not more than five rooms for rent or hire that is actually occupied as a residence by the proprietor of such establishment. While there may be a rationale for this exclusion in the context of these other Federal statutes, the Commission sees no basis for this exclusion in the context of pool and spa safety. The number of units in an establishment bears no relationship to whether a pool or spa on the premises may contain a safety hazard to the patrons of such an establishment. Thus, the proposed definition would not contain an exclusion for an establishment with five or fewer units for rent or hire.

3. "Other Place of Lodging." The Commission's proposed interpretation of "public accommodations facility" would include the phrase "other place of lodging." The Commission intends to follow the legal precedent of the ADA in interpreting this term. The legislative history to the ADA provides that the phrase "other places of lodging" does not include residential facilities. H.R. Resp. No. 101–485(11), 101st Cong., 2d Sess. 383 (1990), *reprinted in* U.S. Code Cong. & Admin. News 1990, at p. 267. The Appendix to the ADA regulations explains that the rationale for excluding solely residential facilities from the category places of lodging is "because the nature of a place of lodging contemplates the use of the facility for short term stays." 28 CFR App. B, § 36.104, p. 614–615 (1997). Thus, a residential facility is excluded from the definition of public accommodation. However, under relevant ADA precedent, if the facility were to offer a significant number of short term stays, it would lose its characterization as a residential facility and become a "place of lodging," thereby a public accommodation. Letters from the Department of Justice and case law illustrate this point. *See, e.g.,* Letter from Joan A. Magagna, Deputy Chief, Public Access Section, U.S. Department of Justice (June 15, 1993) (condominium complex does not constitute a place of public accommodation, assuming it does not offer such short term stays that it could be considered a place of lodging); *see also Access 4 All, Inc.* v. *The Atlantic Hotel Condominium Ass'n,* 2005 U.S. Dist. LEXIS 41601 (November 22, 2005) (condominium buildings may be covered as places of public accommodation if they operate as places of lodging; determining whether a particular condominium facility is a place of public accommodation would depend on the extent to which it shares characteristics normally associated with a hotel, motel, or inn); *Thompson* v. *Sand Cliffs Owners Ass'n, Inc.,* 1998 U.S. Dist. LEXIS 23632 (1998) (according to the commentary related to the ADA regulations, the difference between a residential facility and a non-residential "place of lodging" is the length of the occupant's stay; the nature of a place of lodging contemplates the use of a facility for short-term stays). The Commission intends to use the same criteria as that found in the ADA regulations, legislative history, case law, and DOJ guidance regarding whether a particular facility is residential in nature or, alternatively, an "other place of lodging" subject to the provisions for public accommodations facilities under the VGB Act. To make this clear, the proposed interpretive rule would include the phrase, "including, but not limited to, rental units rented on a bi-weekly or weekly basis." (Note that while a residential apartment complex would be excluded from the definition of "public accommodations facility" under the ADA, a pool or spa located in a residential apartment complex would not be excluded from the definition of a public pool or spa under the VGB Act because section 1404(c)(2)(B)(ii) of the Act includes pools or spas open exclusive to "residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area" within the definition of "public pool or spa.")

Thus, for example, for spas within individual condominium units or mountain lodge homes, the inquiry would involve determining whether the condominium unit or mountain lodge itself shares characteristics with inns, hotels, or motels, or whether the unit is rented for a sufficient number of short-term stays such that it becomes a "place of lodging" and thus a public accommodations facility. These determinations are fact-specific, and the Commission will rely on the same criteria as that used by courts and the Department of Justice in making such determinations.

C. Description of the Proposed Interpretive Rule

The proposed interpretive rule would amend part 1450. Section 1450.1, Scope, would explain that part 1450 pertains to the Virginia Graeme Baker Pool and Spa Safety Act and that the statute is designed to prevent child drowning, drain entrapments, and eviscerations in pools and spas.

Section 1450.2, Definitions, would define "public accommodations facility" at paragraph (a) as "an inn, hotel, motel, or other place of lodging, including, but not limited to, rental units rented on a bi-weekly or weekly basis."

List of Subjects in 16 CFR Part 1450

Consumer protection, Infants and children, Law enforcement.

E. Conclusion

For the reasons stated above, the Commission proposes to amend part 1450 of title 16 of the Code of Federal Regulations as follows:

PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

1. The authority citation for part 1450 continues to read as follows:

Authority: 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794.

2. Section 1450.1 is added to read as follows:

§ 1450.1 Scope.

This part pertains to the Virginia Graeme Baker Pool and Spa Safety Act, ("Act"), 15 U.S.C. 8001 *et seq.,* which is designed to prevent child drowning, drain entrapments and eviscerations in pools and spas.

3. Add paragraph (a) to § 1450.2 to read as follows:

§ 1450.2 Definitions.

(a) *Public accommodations facility* means an inn, hotel, motel, or other place of lodging, including, but not limited to, rental units rented on a bi-weekly or weekly basis.

* * * * *

Dated: October 15, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–26520 Filed 10–19–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1450

Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation; Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: In the **Federal Register** of March 15, 2010, the Consumer Product Safety Commission ("CPSC" or "Commission") issued a proposed interpretive rule that would interpret the term "public accommodations facility" as used in the Virginia Graeme Baker Pool and Spa Safety Act ("VGB Act" or "Act") as "an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor" (75 FR 12167). The Commission is withdrawing the March 15, 2010 proposed interpretive rule and, elsewhere in this issue of the **Federal Register**, is issuing a new proposed interpretive rule with a 60-day comment period which would interpret "public accommodations facility" as "an inn, hotel, motel, or other place of lodging, including but not limited to, rental units rented on a bi-weekly or weekly basis."

DATES: The proposed interpretive rule is withdrawn as of October 22, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara E. Little, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *blittle@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a proposed interpretive rule on the definition of "public accommodations facility in the **Federal Register** of March 15, 2010 (75 FR 12167). The proposed interpretive rule would interpret "public accommodations facility" to mean: "An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor."

CPSC staff prepared a draft final interpretative rule for the Commission's approval, but, on August 4, 2010, the Commission voted to withdraw the proposed interpretive rule and to direct CPSC staff to draft a new proposed interpretive rule with a 60-day comment period and interpreting "public accommodations facility" as "an inn, hotel, motel, or other place of lodging, including, but not limited to, rental units rented on a bi-weekly or weekly basis." The Commission preliminarily determined that the exception for an owner-occupied establishment located within a building that contains not more than five rooms for rent or hire is inappropriate in the context of pool and spa safety because the number of units for rent or hire has no bearing on the safety of the pool. In addition, the Commission wanted to make clear that a residential facility may become a "place of lodging" if the facility were to offer a significant number of short term stays.

Thus, the Commission, through this notice, is withdrawing the March 15, 2010 proposed interpretive rule. Elsewhere in this issue of the **Federal Register**, the Commission is issuing a new proposed interpretive rule to interpret "public accommodations facility" in the VGB Act as "an inn, hotel, motel, or other place of lodging, including, but not limited to, rental units rented on a bi-weekly or weekly basis."

Dated: October 15, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–26521 Filed 10–21–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB32

Definition of the Term "Fiduciary"

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document contains a proposed rule under the Employee Retirement Income Security Act (ERISA) that, upon adoption, would protect beneficiaries of pension plans and individual retirement accounts by more broadly defining the circumstances under which a person is considered to be a "fiduciary" by reason of giving investment advice to an employee benefit plan or a plan's participants. The proposal amends a thirty-five year old rule that may inappropriately limit the types of investment advice relationships that give rise to fiduciary duties on the

part of the investment advisor. The proposed rule takes account of significant changes in both the financial industry and the expectations of plan officials and participants who receive investment advice; it is designed to protect participants from conflicts of interest and self-dealing by giving a broader and clearer understanding of when persons providing such advice are subject to ERISA's fiduciary standards. For example, the proposed rule would define certain advisers as fiduciaries even if they do not provide advice on a "regular basis." Upon adoption, the proposed rule would affect sponsors, fiduciaries, participants, and beneficiaries of pension plans and individual retirement accounts, as well as providers of investment and investment advice related services to such plans and accounts.

DATES: Written comments on the proposed regulations should be submitted to the Department of Labor on or before January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8500. This is not a toll-free number.

ADDRESSES: To facilitate the receipt and processing of comment letters, the EBSA encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov* (enter into subject line: Definition of Fiduciary Proposed Rule) or by using the Federal eRulemaking portal at *http://www.regulations.gov.* Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Definition of Fiduciary Proposed Rule, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

A. Background

The Employee Retirement Income Security Act of 1974 (ERISA) is a comprehensive statute designed to promote the interests of participants in employee benefit plans and their beneficiaries by establishing standards of conduct, responsibility, and obligation for fiduciaries of those plans. ERISA imposes a number of stringent duties on those who act as plan fiduciaries, including a duty of undivided loyalty, a duty to act for the exclusive purposes of providing plan benefits and defraying reasonable expenses of administering the plan, and a stringent duty of care grounded in the prudent man standard from trust law.[1] Congress supplemented these general duties by categorically barring, subject to exemption, certain "prohibited" transactions.[2] Fiduciaries are personally liable for losses sustained by a plan that result from a violation of these rules.[3]

Section 3(21)(A) of ERISA provides in relevant part that a person is a fiduciary with respect to a plan to the extent (i) it exercises any discretionary authority or discretionary control with respect to management of such plan or exercises any authority or control with respect to management or disposition of its assets, (ii) it renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) it has any discretionary authority or discretionary responsibility in the administration of such plan.[4] On its face, section 3(21)(A)(ii) sets out a simple two-part test for determining fiduciary status: A person renders investment advice with respect to any moneys or other property of a plan, or has any authority or responsibility to do so; and the person receives a fee or other compensation, direct or indirect, for doing so.

In 1975, shortly after ERISA was enacted, the Department issued a regulation, at 29 CFR 2510.3–21(c), that defines the circumstances under which a person renders "investment advice" to an employee benefit plan within the meaning of section 3(21)(A)(ii) of ERISA.[5] A person who renders "investment advice" under the regulation, and receives a fee or other compensation, direct or indirect, for doing so, is a fiduciary under section 3(21)(A)(ii). The current regulation provides in relevant part as follows:

(c) *Investment advice.* (1) A person shall be deemed to be rendering "investment advice" to an employee benefit plan, within the meaning of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (the Act) and this paragraph, only if:

(i) Such person renders advice to the plan as to the value of securities or other property, or makes recommendation as to the advisability of investing in, purchasing, or selling securities or other property; and

(ii) Such person either directly or indirectly (*e.g.,* through or together with any affiliate)—

(A) Has discretionary authority or control, whether or not pursuant to agreement, arrangement or understanding, with respect to purchasing or selling securities or other property for the plan; or

(B) Renders any advice described in paragraph (c)(1)(i) of this section on a regular basis to the plan pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments.

The regulation significantly narrows the plain language of section 3(21)(A)(ii), creating a 5-part test that must be satisfied in order for a person to be treated as a fiduciary by reason of rendering investment advice. For advice to constitute "investment advice," an adviser who does not have discretionary authority or control with respect to the purchase or sale of securities or other property for the plan must—

(1) Render advice as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing or selling securities or other property

(2) On a regular basis

(3) Pursuant to a mutual agreement, arrangement or understanding, with the plan or a plan fiduciary, that

(4) The advice will serve as a primary basis for investment decisions with respect to plan assets, and that

(5) The advice will be individualized based on the particular needs of the plan.

The Department further limited the term "investment advice" in a 1976 advisory opinion. Under the facts described therein, the Department concluded that a valuation of closely-held employer securities that an employee stock ownership plan (ESOP)

[1] ERISA section 404(a).

[2] ERISA section 406.

[3] ERISA section 409.

[4] Section 4975(e)(3) of the Internal Revenue Code of 1986, as amended (Code) provides a similar definition of the term fiduciary for purposes of Code section 4975.

[5] 40 FR 50842 (Oct. 31, 1975). The Department of Treasury issued a virtually identical regulation, at 26 CFR 54.4975–9(c), that interprets Code section 4975(e)(3). 40 FR 50840 (Oct. 31, 1975). Under section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), the authority of the Secretary of the Treasury to interpret section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. References in this document to sections of ERISA should be read to refer also to the corresponding sections of the Code.

would rely on in purchasing the securities would not constitute investment advice under the regulation.[6]

The current regulation has not been updated since its promulgation in 1975. Since that time, however, the retirement plan community has changed significantly, with a shift from defined benefit (DB) plans to defined contribution (DC) plans. The financial marketplace also has changed significantly, and the types and complexity of investment products and services available to plans have increased. With the resulting changes in plan investment practices, and relationships between advisers and their plan clients, the Department believes there is a need to re-examine the types of advisory relationships that should give rise to fiduciary duties on the part of those providing advisory services. In this regard, we note that recent Department enforcement initiatives indicate there are a variety of circumstances, outside those described in the current regulation, under which plan fiduciaries seek out impartial assistance and expertise of persons such as consultants, advisers and appraisers to advise them on investment-related matters.[7] These persons significantly influence the decisions of plan fiduciaries, and have a considerable impact on plan investments. However, if these advisers are not fiduciaries under ERISA, they may operate with conflicts of interest that they need not disclose to the plan fiduciaries who expect impartiality and often must rely on their expertise, and have limited liability under ERISA for the advice they provide. Recent testimony by the Government Accountability Office noted an association between pension consultants with undisclosed conflicts of interest and lower returns for their client plans.[8] The Department believes that amending the current regulation to establish additional circumstances where investment advice providers are subject to ERISA's fiduciary responsibilities would better protect the interests of plans and their participants and beneficiaries. As a consequence of the current regulation, the Department's investigations of investment advisers must focus on establishing each of the elements of the 5-part test rather than on the precise misconduct at issue in particular cases. Even if an adviser advises a plan about its investments for a fee, the plan relied upon the advice based upon reasonable belief that it was impartial, and the advice was wholly abusive, the Department must still prove each of the test's five elements in order to assert a fiduciary breach. The Department does not believe that this approach to fiduciary status is compelled by the statutory language. Nor does the Department believe the current framework represents the most effective means of distinguishing persons who should be held accountable as fiduciaries from those who should not. For these reasons, the Department believes it is appropriate to update the "investment advice" definition to better ensure that persons, in fact, providing investment advice to plan fiduciaries and/or plan participants and beneficiaries are subject to ERISA's standards of fiduciary conduct.

B. Overview of Proposal

1. Proposed Amendment to Regulation Under ERISA Section 3(21)(A)(ii)

In general, the proposal amends paragraph (c) of Sec. 2510.3–21 by striking the current paragraph (c)(1), redesignating the current paragraph (c)(2) as paragraph (c)(5), and adding new paragraphs (c)(1) through (c)(4). New paragraph (c)(1) sets out the general rule that a person renders "investment advice" for a fee or other compensation, direct or indirect, to an employee benefit plan, within the meaning of section 3(21)(A)(ii) of ERISA and the regulation, if the person provides advice or makes recommendations described in paragraph (c)(1)(i), directly or indirectly meets any of the conditions described in paragraph (c)(1)(ii), and receives a fee or other compensation, direct or indirect, for providing such advice or recommendations. New paragraph (c)(2) sets forth certain limitations in the application of paragraph (c). New paragraph (c)(3) provides guidance with respect to the meaning of the term "fee or other compensation, direct or indirect," as used in section 3(21)(A)(ii) of ERISA. New paragraph (c)(4) clarifies the proposed amendment would apply for purposes of Code section 4975.

a. Description of Advice

Under paragraph (c)(1)(i)(A) of the proposal, the types of advice and recommendations that may result in fiduciary status under ERISA section 3(21)(A)(ii) are: Advice, appraisals or fairness opinions concerning the value of securities or other property; recommendations as to the advisability of investing in, purchasing, holding, or selling securities or other property; or advice or recommendations as to the management of securities or other property.

This provision encompasses the same types of investment-related advice and recommendations as covered by paragraph (c)(1)(i) of the current regulation, except for the following modifications. First, the proposal specifically includes the provision of appraisals and fairness opinions. As discussed above, the Department concluded in AO 76–65A that a valuation of closely held employer securities that would be relied on in the purchase of the securities by an ESOP would not constitute investment advice under the current regulation. However, a common problem identified in the Department's recent ESOP national enforcement project involves the incorrect valuation of employer securities.[9] Among these are cases where plan fiduciaries have reasonably relied on faulty valuations prepared by professional appraisers. The Department believes that application of the proposal to appraisals and fairness opinions rendered in connection with plan transactions may directly or indirectly address these issues, and align the duties of persons who provide these opinions with those of fiduciaries who rely on them. Accordingly, paragraph (c)(1)(i)(A)(*1*) of the proposal specifically includes the provision of appraisals and fairness opinions concerning the value of securities or other property. This paragraph is intended to supersede the Department's conclusion in AO 76–65A, but is not limited to employer securities. Therefore, if a person is retained by a plan fiduciary to appraise real estate being offered to the plan for purchase, then the provision of the appraisal would fall within paragraph (c)(1)(i)(A)(*1*) of the proposal, and may result in fiduciary status under ERISA section 3(21)(A)(ii). The Department would expect a fiduciary appraiser's determination of value to be unbiased, fair, and objective, and to be made in good faith and based on a prudent investigation under the prevailing

[6] Advisory Opinion 76–65A (June 7, 1976) (AO 76–65A).

[7] The Department's Employee Benefits Security Administration (EBSA) maintains a national enforcement project designed to identify and correct violations of ERISA in connection with Employee Stock Ownership Plans. One of the most common violations found is the incorrect valuation of employer securities. Another project, the Consultant/Adviser project (CAP) focuses on ERISA violations that may occur in connection with the receipt of improper, undisclosed compensation by pension consultants and other investment advisers. Information on the EBSA's national enforcement projects can be found at *http://www.dol.gov/ebsa/erisa_enforcement.html.*

[8] *Conflicts of Interest Can Affect Defined Benefit and Defined Contribution Plans,* GAO 09–503T (Mar. 24, 2009).

[9] *See* footnote 7.

circumstances then known to the appraiser.

Second, the proposal at paragraph (c)(1)(i)(A)(*3*) makes specific reference to advice and recommendations as to the management of securities or other property. This would include, for instance, advice and recommendations as to the exercise of rights appurtenant to shares of stock (*e.g.,* voting proxies),[10] and as to the selection of persons to manage plan investments.

Finally, the proposal at paragraph (c)(1)(i)(B) makes clear that fiduciary status under section 3(21)(A)(ii) may result from the provision of advice or recommendations not only to a plan fiduciary, but also to a plan participant or beneficiary. This reflects the Department's long-standing interpretation of the current regulation.[11] The Department notes that it also has taken the position that, as a general matter, a recommendation to a plan participant to take an otherwise permissible plan distribution does not constitute investment advice within the meaning of the current regulation, even when that advice is combined with a recommendation as to how the distribution should be invested.[12] Concerns have been expressed that, as a result of this position, plan participants may not be adequately protected from advisers who provide distribution recommendations that subordinate participants' interests to the advisers' own interests. The Department, therefore, is requesting comment on whether and to what extent the final regulation should define the provision of investment advice to encompass recommendations related to taking a plan distribution. The Department is specifically interested in information on other laws that apply to the provision of these types of recommendations, whether and how those laws safeguard the interests of plan participants, and the costs and benefits associated with extending the regulation to these types of recommendations.

b. Conditions

Paragraph (c)(1)(ii) of the proposal sets forth alternative conditions, at paragraphs (c)(1)(ii)(A) through (D), at least one of which must be met by a person rendering advice described in paragraph (c)(1)(i) in order for the person to be considered rendering investment advice under the proposal. The conditions may be met by the person acting directly or indirectly, such as through or together with an affiliate. These alternative conditions generally relate to the degree of authority, control, responsibility or influence that is possessed, directly or indirectly, by the person rendering the advice, and the reasonable expectations of the persons receiving the advice. The conditions at paragraphs (c)(1)(ii)(B) and (D) of the proposal are based on paragraphs (c)(1)(ii)(A) and (B) of the current regulation (which include elements of the 5-part test described above), but with modifications to simplify their application and broaden their scope. The conditions at paragraphs (c)(1)(ii)(A) and (C) are new, and are intended to broaden the scope of the regulation based on readily-ascertainable criteria.

Paragraph (c)(1)(ii)(A) of the proposal includes persons providing advice or recommendations described in paragraph (c)(1)(i) that represent or acknowledge that they are acting as a fiduciary within the meaning of ERISA with respect to such advice or recommendations. The Department believes that explicitly claiming ERISA fiduciary status, orally or in writing, enhances the adviser's influence, and gives the advice recipient a reasonable expectation that the advice will be impartial and prudent. Therefore such a representation or acknowledgment in connection with provision of the advice or recommendations described in paragraph (c)(1)(i) is sufficient under the proposal to result in fiduciary status under section 3(21)(A)(ii) if provided for a fee or other compensation, direct or indirect.

Paragraph (c)(1)(ii)(B) of the proposal includes persons providing the types of investment-related advice or recommendations described in paragraph (c)(1)(i) that are fiduciaries with respect to the plan within the meaning of section 3(21)(A)(i) or (iii) of ERISA. This provision is based on the condition in paragraph (c)(1)(ii)(A) of the current regulation, which is met if the person rendering advice directly or indirectly has discretionary authority or control with respect to purchasing or selling securities or other property for the plan. However, the proposal broadens the scope of this condition by referencing a person who is a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, which is not limited to persons with authority or control relating to purchases or sales of investments for a plan. Specifically, section 3(21)(A)(i) and (iii) describe any person who exercises any discretionary authority or discretionary control with respect to management of the plan, exercises any authority or control with respect to management or disposition of its assets, or has any discretionary authority or discretionary responsibility in the administration of the plan.

Paragraph (c)(1)(ii)(C) includes persons providing advice or recommendations described in paragraph (c)(1)(i) that are investment advisers within the meaning of section 202(a)(11) of the Investment Advisers Act of 1940 (Advisers Act), 15 U.S.C. 80b–2(a)(11). This section generally defines an "investment adviser" as any person who, for compensation, engages in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities, or who promulgates analyses or reports concerning securities. However, section 202(a)(11) specifically excludes the following: (1) A bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company, except that the term "investment adviser" includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if such services or actions are performed through a separately identifiable department or division of a bank, the department or division, and not the bank itself, is deemed to be the investment adviser; (2) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his or her profession; (3) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (4) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (5) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; (6) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing,

[10] The fiduciary act of managing plan assets that are shares of corporate stock include the management of voting rights appurtenant to those shares of stock. 29 CFR 2509.08–2.

[11] *See* 29 CFR 2509.96–1(c).

[12] Advisory Opinion 2005–23A (Dec. 7, 2005).

selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; or (7) such other persons designated by the Securities and Exchange Commission (SEC) by rules, regulations or orders.[13] Courts have determined that these investment advisers owe fiduciary duties to their clients under the Advisers Act.[14] In this regard, the SEC has stated: "the Investment Advisers Act imposes on investment advisers an affirmative duty to their clients of utmost good faith, full and fair disclosure of all material facts, and an obligation to employ reasonable care to avoid misleading their clients." [15] Thus, the Department proposes to include these persons under the regulation.

Paragraph (c)(1)(ii)(D) includes persons that provide advice or make recommendations described in paragraph (c)(1)(i) pursuant to an agreement, arrangement or understanding, written or otherwise, between such person(s) and the plan, a plan fiduciary, or a plan participant or beneficiary, that such advice may be considered in connection with making investment or management decisions with respect to plan assets, and will be individualized to the needs of the plan, a plan fiduciary, or a participant or beneficiary.

Paragraph (c)(1)(ii)(D) of the proposal is based on the elements of the 5-part test contained in paragraph (c)(1)(ii)(B) of the current regulation which, as described above, requires that a person render advice on a regular basis to the plan pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments. The Department notes several differences between the proposal and current paragraph (c)(1)(ii)(B). The proposal does not require the advice to be provided on a regular basis. The Department has observed that in those instances where a plan fiduciary retains a service provider such as a consultant or appraiser to render advice, it often involves discrete advice with respect to distinct investment transactions, such as a purchase of employer securities. The Department does not believe that the significance of the advice on a plan fiduciary's decisions diminishes merely because it is rendered only once, rather than on a *regular basis,* or that fiduciary status under section 3(21)(A)(ii) should depend on such a distinction. For example, a fiduciary may retain a person to provide advice on a particular real estate investment in the plan's portfolio, and never have a reason to use this adviser again. Nevertheless, such advice may be critical to an important investment decision and the plan's agreement with the adviser may give the plan every expectation that the adviser is competent and has no conflicts of interest. The Department also believes that removal of the regular basis requirement will help address uncertainty under the current regulation by eliminating difficult factual questions relating to what constitutes a regular basis, and when it begins and ends, and by making clear that fiduciary status applies to each instance advice is rendered.

The proposal also does not require that the parties have a mutual understanding that the advice will serve as a primary basis for plan investment decisions. Nothing in ERISA compels conditioning fiduciary status on a requirement that an adviser and plan fiduciary have a mutual understanding as to the primacy of the advice given, in relation to other advice or information that the fiduciary may consider in making a decision. The Department believes that when a service provider is retained to render advice, the plan should generally be able to rely on the advice without regard to whether the parties intend it be a primary or lesser basis in the fiduciary's decision-making. For example, in a complex investment decision, a plan fiduciary may need to consult advisers with different areas of investment expertise in order to make a prudent decision. The relative importance of the different kinds of advice that the plan fiduciary obtains may be impossible to discern, and should not affect the question of whether the adviser is a fiduciary. Accordingly, under the proposal it is sufficient if the understanding of the parties is that the advice will be considered in connection with making a decision relating to plan assets. The Department also believes this modification will simplify this condition by eliminating difficult factual issues surrounding the primacy of the advice rendered. Other changes are editorial in nature and intended to improve the readability of the provision.

It is important to note generally that paragraphs (c)(1)(ii)(A), (B), (C) and (D) are independent, alternative conditions. Satisfaction of any one of these alternative conditions may result in fiduciary investment advice under the proposal if paragraph (c)(1)(i) also is satisfied. For example, a bank or a broker dealer that provides investment advice or recommendations described in paragraph (c)(1)(i) might fall within an exclusion from the definition of "investment adviser" in section 202(a)(11) of the Advisers Act, and therefore might not meet paragraph (c)(1)(ii)(C) of the proposal. Notwithstanding this exclusion, if the bank or broker dealer meets the requirements of paragraphs (c)(1)(ii)(A), (B) or (D), it would nevertheless be considered to render investment advice under the proposal.

c. Limitations

Paragraphs (c)(2) of the proposal sets forth certain limitations with respect to the application of paragraph (c)(1).

Paragraph (c)(2)(i) provides that a person shall not be considered to be a person described in paragraph (c)(1) with respect to the provision of advice or recommendations if, with respect to a person other than a person described in paragraph (c)(1)(ii)(A), such person can demonstrate that the recipient of the advice knows or, under the circumstances, reasonably should know, that the person is providing the advice or making the recommendation in its capacity as a purchaser or seller of a security or other property, or as an agent of, or appraiser for, such a purchaser or seller, whose interests are adverse to the interests of the plan or its participants or beneficiaries, and that the person is not undertaking to provide impartial investment advice. This provision reflects the Department's understanding that, in the context of selling investments to a purchaser, a seller's communications with the purchaser may involve advice or recommendations, within paragraph (c)(1)(i) of the proposal, concerning the investments offered. The Department has determined that such communications ordinarily should not result in fiduciary status under the proposal if the purchaser knows of the person's status as a seller whose interests are adverse to those of the purchaser, and that the person is not undertaking to provide impartial investment advice. However, the Department believes there is an inherent expectation of impartial investment advice from a person described in

[13] *See* Advisers Act section 202(a)(11)(A)–(G), 15 U.S.C. 80b–2(a)(11)(A)–(G).

[14] *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180 (1963).

[15] SEC Advisers Act Rel. No. 1393 (Nov. 29, 1993).

paragraph (c)(1)(ii)(A) (involving representations or acknowledgment of ERISA fiduciary status with respect to providing advice or recommendations). Accordingly, paragraph (c)(2)(i) does not apply to such a person.

As an example, if a person selling securities to a plan is a fiduciary of the plan under section 3(21)(A)(i) or (iii) of ERISA (and therefore in paragraph (c)(1)(ii)(B) of the proposal),[16] or is an investment adviser as defined in the Advisers Act (and therefore in paragraph (c)(1)(ii)(C) of the proposal),[17] then the person may seek to utilize paragraph (c)(2)(i) to avoid fiduciary status under the proposal in connection with the sale. However, if the person also makes a representation of ERISA fiduciary status in connection with the sale, orally or in writing, then paragraph (c)(2)(i) would not be available. The Department intends that a person seeking to avoid fiduciary status under the proposal by reason of the application of paragraph (c)(2)(i) must demonstrate compliance with all applicable requirements of the limitation.

Paragraph (c)(2)(ii) describes certain activities taken in connection with individual account plans that will not, in and of themselves, be treated as rendering investment advice for purposes of ERISA section 3(21)(A)(ii). Paragraph (c)(2)(ii)(A) clarifies that the provision of investment education information and materials described in 29 CFR 2509.96–1(d) will not constitute the rendering of investment advice under section 3(21)(A)(ii) of ERISA. In 29 CFR 2509.96–1(d), the Department identified four specific categories of information and materials which, if furnished, alone or on combination, to plan participants or beneficiaries would not result in the rendering of investment advice under the current regulation. The Department reasoned that these categories of information and materials—plan information, general financial and investment information, asset allocation models, and interactive materials—would not involve advice or recommendations within the meaning of paragraph (c)(1)(i) of the current regulation.[18] The proposed modifications to the advice and recommendations described in paragraph (c)(1)(i) would not change this conclusion. This is reflected in paragraph (c)(2)(ii)(A). The Department notes that the information and materials described in 29 CFR 2509.96–1(d) merely represent examples of the type of information and materials that may be furnished to a participant or beneficiary without being considered the rendering of investment advice under the proposal.

Paragraphs (c)(2)(ii)(B) and (c)(2)(ii)(C) address certain common practices that have developed with the growth of participant-directed DC plans. Service providers such as recordkeepers and third party administrators sometimes make available a menu of investments from which a plan fiduciary selects a more limited menu that will be available under the plan for participant or beneficiary investment. The provider may simply offer a "platform" of investments from which the plan fiduciary selects those appropriate for the plan, or the provider may select, or assist the plan fiduciary in selecting the investments that will be available under the plan. The service provider also sometimes retains the ability to later make changes to the plan's investment menu, subject to advance approval by the plan fiduciary. In some instances, the provider and the plan fiduciary clearly understand that the provider is offering investments as to which the provider has financial or other relationships, and is not purporting to provide impartial investment advice regarding construction of the plan's investment menu. In other instances, the plan fiduciary is relying on the provider's impartial expertise in selecting an investment menu for the plan. Also, to assist in the plan fiduciary's selection or monitoring of investments from those made available, such a service provider also might provide to the fiduciary general financial information and data regarding matters such as historic performance of asset classes and of the investments available through the provider.

To help address any uncertainty as to how these arrangements are treated under the proposal, the Department is clarifying at paragraph (c)(2)(ii)(B) that, with respect to an individual account plan, the marketing or making available (*e.g.,* through a platform or similar mechanism), without regard to the individualized needs of the plan, its participants, or beneficiaries, securities or other property from which a plan fiduciary may designate investment alternatives into which plan participants or beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts, will not, by itself, be treated as the rendering of investment advice within the meaning of section 3(21)(A)(ii) of ERISA if the person making available such investments discloses in writing to the plan fiduciary that the person is not undertaking to provide impartial investment advice.[19] Paragraph (c)(2)(ii)(C) of the proposal further clarifies that, in connection with the activities described in paragraph (c)(2)(ii)(B), the provision of certain information and data to assist a plan fiduciary's selection or monitoring of such plan investment alternatives will not be treated as rendering investment advice if the person providing such information or data discloses in writing to the plan fiduciary that the person is not undertaking to provide impartial investment advice.

The Department recognizes that compliance with a number of ERISA's reporting and disclosure provisions requires information on the value of plan assets. The Department does not intend, as a general matter, for such information provided solely for compliance purposes to fall within the type of advice described under that proposal. Paragraph (c)(2)(iii) provides that advice described in paragraph (c)(1)(i)(A)(*1*) does not encompass the preparation of a general report or statement that merely reflects the value of an investment of a plan or a participant or beneficiary, provided for purposes of compliance with the reporting and disclosure requirements of the Act, the Internal Revenue Code, and the regulations, forms and schedules issued thereunder, unless such report involves assets for which there is not a generally recognized market and serves as a basis on which a plan may make distributions to plan participants and beneficiaries.

[16] The Department notes that, because such a fiduciary would be a party in interest to the plan under section 3(14)(A) of ERISA, such a transaction would be prohibited by section 406(a) of ERISA unless exempt pursuant to an available statutory or administrative prohibited transaction exemption.

[17] The Department is not addressing any issues under the Advisers Act related to such a transaction.

[18] *See generally* 29 CFR 2509.96–1(d).

[19] The Department notes, however, that such a service provider's substitution or deletion of investment options selected by a plan fiduciary may, depending on the surrounding facts and circumstances, constitute an exercise of "authority or control respecting management or disposition of [a plan's] assets" within the meaning of section 3(21)(A)(i) of ERISA. *See* Advisory Opinion 97–16A (May 22, 1997).

d. Fee Requirement

A necessary element of fiduciary status under section 3(21)(A)(ii) of ERISA is that a person must render investment advice for a fee or other compensation, direct or indirect. Paragraph (c)(3) provides that purposes of section 3(21)(A)(ii), a fee or other compensation, direct or indirect, received by a person for rendering investment means any fee or compensation for the advice received by the person (or by an affiliate) from any source and any fee or compensation incident to the transaction in which the investment advice has been rendered or will be rendered. For example, the term fee or compensation includes, but is not limited to, brokerage, mutual fund sales, and insurance sales commissions. It includes fees and commissions based on multiple transactions involving different parties.

e. Application Under Code Section 4975

Code section 4975(e)(3) contains a provision that is parallel to ERISA section 3(21)(A)(ii) and defines the term "fiduciary" for purposes of the prohibited transaction excise tax provisions in Code section 4975. In 1975, the Department of the Treasury issued a regulation under Code section 4975(e)(3), found at 26 CFR 54.4975–9(c), that parallels 29 CFR 2510.3–21(c). Under section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), the authority of the Secretary of the Treasury to interpret section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Paragraph (c)(4) clarifies that the proposed amendments to the definition of the term "fiduciary" in 29 CFR 2510.3–21(c) also apply for purposes of the application of Code section 4975 with respect to any plan described in Code section 4975(e)(1), regardless of whether such plan is an employee benefit plan.

C. Effective Date

The Department proposes that the regulations contained in this document will be effective 180 days after publication of the final regulations in the **Federal Register**. The Department invites comments on whether the final regulations should be made effective on a different date.

D. Request for Comment

The Department invites comments from interested persons on the proposed rule. To facilitate the receipt and processing of comment letters, the EBSA encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov* (enter into subject line: Definition of Fiduciary Proposed Rule) or by using the Federal eRulemaking portal at *http://www.regulations.gov*. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Definition of Fiduciary Proposed Rule, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The comment period for the proposed regulations will end 90 days after publication of the proposed rule in the **Federal Register**. The Department believes that this period of time will afford interested persons an adequate amount of time to analyze the proposal and submit comments. Written comments on the proposed rule should be submitted to the Department on or before January 20, 2011.

E. Regulatory Impact Analysis

1. Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this rule is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an effect on the economy of $100 million in any one year. Accordingly, OMB has reviewed the rule pursuant to the Executive Order. The Department performed a comprehensive, unified analysis to estimate the costs and, to the extent feasible, provide a qualitative assessment of benefits attributable to the proposed rule for purposes of compliance with Executive Order 12866 and the Regulatory Flexibility Act. The analysis is summarized in Table 1, below.

TABLE 1—ACCOUNTING TABLE

Benefits

Annualized Monetized ($millions/year)—Not Quantified.

Qualitative: The proposed regulation's new definition of when a person is considered a "fiduciary" of a pension plan by reason of providing investment advice will discourage harmful conflicts of interest, improve service value, and enhance the Department's ability to redress abuses and more effectively and efficiently allocate its enforcement resources. The proposed regulation also should help plans by giving them a means to seek recoupment of losses and disgorgement of ill-gotten gains from those newly-considered fiduciaries who engage in misconduct. While most of the recoupment will be transfers, they are welfare improving, because they return money to plans that would not have been taken from them if the service provider had been acting in the best interest of the plan and its participants and beneficiaries as required by ERISA. Given the magnitude of plan assets that may be affected, even a small service value improvement by a moderate number of plans could yield economically significant benefits.

Costs	Estimate	Year dollar	Discount rate	Period covered
Annualized Monetized ($millions/year) for service provider compliance review and implementation costs	2.1	2010	7%	2011–2020
	1.9	2010	3%	2011–2020

Annualized Monetized ($millions/year) for higher costs of doing business for service providers not previously covered by the fiduciary definition—Not Quantified.

Qualitative: An increased number of service providers could become fiduciaries to the plans to whom they provide services. These service providers could experience higher costs of doing business due to increased liability. To the extent costs and liabilities rise, the plan service provider market could become compressed if plan service providers leave the market. As more service providers become fiduciaries, more transactions could violate ERISA prohibited transaction rules. Absent applicable prohibited transaction exemptions, service providers would have to restructure transactions and/or modify business practices.

2. Background and Need for Regulatory Action

As stated earlier in this preamble, section 3(21)(A)(ii) of ERISA defines a fiduciary as a person that renders investment advice to a plan for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so. In 1975, shortly after ERISA was enacted, the Department adopted a regulation [20] that significantly limited the broad statutory language. The current regulation provides that a person provides "investment advice" for purposes of section 3(21)(A)(ii) of ERISA only if it renders advice as to the purchase, sale, or value of securities or other property and either has discretionary authority or control with respect to the purchase of property for the plan, or, in the alternative, the person (1) renders advice as to the purchase, sale, or value of securities or other property, (2) on a regular basis, (3) pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a plan fiduciary, that (4) the advice will serve as a primary basis for investment decisions with respect to plan assets, and that (5) the advice will be individualized based on the particular needs of the plan (hereinafter referred to as the "five-part test").[21] Under the current regulation, a plan service provider must satisfy each element of the five-part test in order to be considered a fiduciary under ERISA section 3(21)(A)(ii) unless the service provider renders advice and has discretionary authority or control with respect to purchasing or selling securities or other property for the plan.

The current regulation has not been updated since it was promulgated in 1975. Since that time, the design and operation of employee benefit plans has changed significantly. One of the most dramatic changes has been the growth of defined contribution (DC) plans, specifically, 401(k) plans, which did not exist when the current regulation was promulgated. Department of Labor data show that from 1975 through 2007, the percentage of active participants covered by DC plans grew from 29% to 78% and 90% of these active DC plan participants were covered by 401(k) plans.[22] Importantly, about 89% of 401(k) plans covering 95% of all active 401(k) plan participants are participant-directed, which means that participants make investment decisions regarding the investment of assets held in their individual accounts by choosing from a diverse menu of designated investment alternatives selected by plan sponsors.

In 2009, the Government Accountability Office (GAO) found that many opportunities exist in the 401(k) marketplace for plans to hire service providers that have business arrangements that could give rise to conflicts of interest.[23] For example, the GAO noted that plans often hire consultants and other advisers to provide advice regarding investment options and products that should be offered under the plan and to monitor the performance of the selected investments. In some cases, consultants receive compensation from the investment companies whose products they recommend to the plan, which could lead them to steer the plans toward products for which they receive additional compensation. These arrangements can be harmful to plan

[20] 29 CFR 2510.3–21(c).

[21] The scope of the regulation was further limited by the Department in a 1976 advisory opinion (AO 76–65), in which it concluded that, under the facts described therein, a valuation of closely held employer securities that would be relied on in the purchase of the securities by an employee stock ownership plan (ESOP) would not constitute investment advice under the regulation.

[22] *See* U.S. Department of Labor, Employee Benefits Security Administration, "Private Pension Plan Bulletin Historical Tables and Graphs," January 2010, p. 1. This document can be found at *http://www.dol.gov/ebsa/pdf/1975-2007historicaltables.pdf.* Please note that the number of active participants in 1975 and 2007 are not directly comparable because of adjustments in the definition of a participant. This adjustment is explained in detail in the historical tables and graphs.

[23] *See,* GAO, *Conflicts of Interest Can Affect Defined Benefit and Defined Contribution Plans,* GAO–09–503T, Testimony Before the Subcommittee on Health, Employment, Labor and Pensions, Education and Labor Committee, House of Representatives (March 24, 2009), accessible at *http://www.gao.gov/new.items/d09503t.pdf.*

participants, because the plan may pay excessive fees for the provided services, which could lower returns. Participants in participant-directed 401(k) plans are especially vulnerable in these situations, because they must rely on the assets in their individual accounts to meet their retirement income needs.

There also is a greater potential for conflicts of interest to exist in the defined benefit pension plan service provider market than when the current regulation was promulgated. Due to the increased complexity of investment opportunities available to defined benefit plans, plan sponsors often seek investment advice from a broad range of service providers. Some of these service providers have business arrangements that can give rise to conflicts of interest. For example, in a May 2005 study,[24] the Securities and Exchange Commission (SEC) staff found that 13 of the 24 pension consultants examined or their affiliates had undisclosed conflicts of interest, because they provided products and services to pension plan advisory clients, money managers, and mutual funds on an ongoing basis without adequately disclosing these conflicts. The SEC staff also found that the majority of examined pension consultants had business relationships with broker-dealers that raised a number of concerns about potential harm to pension plans.

The current regulation's narrow approach to fiduciary status sharply limits the Department's ability to protect plans and their participants and beneficiaries from conflicts of interest that may arise from the diverse and complex fee practices existing in today's retirement plan services market and to devise effective remedies for misconduct when it occurs. In recent years, non-fiduciary service providers—such as consultants, appraisers, and other advisers—have abused their relationships with plans by recommending investments in exchange for undisclosed kickbacks from investment providers, engaging in bid-rigging, misleading plan fiduciaries about the nature and risks associated with plans investments, and by giving biased,[25] incompetent, and unreliable valuation opinions. Yet, no matter how egregious the abuse, plan consultants and advisers have no fiduciary liability under ERISA, unless they meet every element of the five-part test.

In instances where a plan has relied upon abusive investment advice from a self-dealing consultant concerning an investment product on a single occasion, the Department would be unable to bring an action for fiduciary breach against the consultant, because the "regular basis" element of the current regulation's five-part test would not be satisfied. The consultant would be absolved of liability regardless of the severity of the abuse or the extent of the plan's reliance. This is true even if the consultant engaged in precisely the same conduct that would have been *per se* illegal if committed by an equally culpable consultant that met the current regulation's "regular basis" test.

For example, a plan's purchase of annuity contracts is a major transaction, but it may occur only in connection with the plan's termination. As a result, the Department could not pursue a civil enforcement action against an insurance brokerage company for accepting kickbacks from an annuity carrier while advising plans for a fee regarding the selection of annuity contracts. Even where the brokerage company's recommendation was the primary basis for the plan's choice of annuity providers, the brokers could not be held accountable as fiduciaries because the advice would not have been offered on a regular basis.

Another anomaly associated with the current regulation is that the five-part test applies even to persons who represent themselves to the plan as fiduciaries in rendering investment advice. For example, a consultant could hold itself out as a plan fiduciary in a written contract with the plan, render investment advice for a fee, and still evade fiduciary status by showing that its advice was insufficiently "regular," did not serve as a "primary basis" for the decision, or otherwise failed to meet each element of the five-part test. The current test also makes it easy for consultants to structure their actions to avoid fiduciary status. The SEC found evidence of this practice in its pension consultants examination and made the following statement regarding this issue in its report: "Many pension consultants believe they have taken appropriate actions to insulate themselves from being considered a 'fiduciary' under ERISA. As a result, it appears that many consultants believe they do not have any fiduciary relationships with their advisory clients * * *."[26]

An adviser's recommendation may involve significant sums and matters of specialized expertise, and it may include professions of impartiality. However, unless the advice meets each element of the current regulation's 5-part test, ERISA's remedies for lack of due diligence and disloyalty are unavailable to the plan.

In contrast, when a fiduciary uses its position of trust to enrich itself by engaging in self-dealing and subordinating the plans' interests to its own, it violates numerous provisions of ERISA, including its duty of loyalty provided in section 404 of ERISA and the prohibitions on self-dealing provided in section 406(b) of ERISA. Such a fiduciary also exposes itself to the broadest possible range of remedies under ERISA.

Applying the current regulation in today's service provider market has had a detrimental impact on EBSA's allocation of its enforcement resources. EBSA seeks to focus its enforcement resources on areas that have the greatest impact on the protection of plan assets and participants' benefits. To accomplish this goal, EBSA requires its field offices to place particular emphasis on certain national enforcement projects. The determination of fiduciary status is particularly important to two national enforcement projects: The Employee Stock Ownership Plan (ESOP) Project and the Consultant/Adviser Project (CAP).

The ESOP project is designed to identify and correct violations of ERISA in connection with ESOPs, which are designed to invest primarily in employer securities. CAP focuses on the receipt of improper or undisclosed compensation by employee benefit plan consultants and other investment advisers. EBSA's investigations seek to determine whether the receipt of such compensation, even when disclosed, violates ERISA because the adviser/consultant leveraged its position with a benefit plan to generate additional fees for itself or its affiliates. When ERISA violations are uncovered, EBSA will seek corrective action for past violations as well as prospective relief to deter future violations.

One of the most critical elements in bringing enforcement actions under the ESOP and CAP initiatives is establishing

[24] *See* U.S. Securities and Exchange Commission, Office of Compliance Inspections and Examinations, Staff Report Concerning Examination of Select Pension Consultants (Washington, DC: May 16, 2005.). The report's findings were based on a 2002 to 2003 examination of 24 pension consultants. The report can be accessed at *http://www.sec.gov/news/studies/pensionexamstudy.pdf.*

[25] The GAO found that DB pension plans using consultants with SEC-identified undisclosed conflicts earned returns 130 basis points lower than the others, which implies that bias may taint consultants' advice. *See e.g.,* GAO, *Conflicts of Interest Involving High Risk of Terminated Plans Pose Enforcement Challenges,* Defined Benefit Pension Report (June 2007), at *http://www.gao.gov/new.items/d07703.pdf.*

[26] *See* U.S. Securities and Exchange Commission, Office of Compliance Inspections and Examinations, Staff Report Concerning Examination of Select Pension Consultants, p. 6 (Washington, DC: May 16, 2005).

that a service provider is a fiduciary. In order to make this determination, investigators must gather evidence to support a finding for each element of the five-part test. In all cases, the analysis necessary to determine fiduciary status is very fact-intensive and requires extensive review of plan documents and contracts, client files, e-mails, investment documentation, accounting records, and interview statements to be obtained from service providers and their affiliates. Consequently, EBSA investigators routinely devote disproportionate time and resources establishing all elements of the five-part test, rather than focusing on the precise misconduct at issue in particular cases.

Based on the foregoing, the Department has determined that regulatory action is necessary to adopt a definition of the term “fiduciary” that more closely reflects the broad statutory definition of the term, recognizes the diverse and complex fee practices that exist in today’s service provider market and their potential conflicts, accounts for the shift from DB to DC plans, expands the scope of fiduciary protections for plans and their participants and beneficiaries, and permits EBSA investigators and attorneys to focus their efforts on the adviser’s conduct rather than meeting the evidentiary requirements necessary to prove that all elements of the current regulation’s five-part test are satisfied. As discussed in further detail below, the Department believes that amending the current regulation by broadening the scope of service providers that would be considered fiduciaries would enhance the Department’s ability to redress service provider abuses that currently exist in the market, such as undisclosed fees, misrepresentation of compensation arrangements, and biased appraisals of the value of employer securities and other plan investments.

4. Affected Entities

The Department used data from the Schedule C of the 2007 Form 5500, the latest available complete data, to estimate the universe of plan service providers that would be affected by the proposed rule. Generally, plans with 100 or more participants are required to report on Schedule C persons who rendered services to or who had transactions with the plan during the reporting year if the person received, directly or indirectly, $5,000 or more in reportable compensation in connection with services rendered or their position with the plan. The type of services provided by each service provider also must be reported. Based on the Schedule C service codes, the Department estimates that 5,300 unique service providers most likely provide investment- and valuation-related services covered under the proposed rule that could cause them to be considered fiduciaries. In order to provide a reasonable estimate, service providers reporting service codes corresponding to brokerage (real estate), brokerage (stocks, bonds, commodities), consulting (general), insurance agents and brokers, valuation services (appraisals, asset valuation, *etc.*) and investment evaluations were assumed to provide covered services. Note that the code for investment advisory services was omitted, because we assume that such service providers are ERISA fiduciaries.

The Department acknowledges that its estimate may be imprecise. Although some small plans file Schedule C, small plans generally are not required to complete Schedule C. Therefore, there would be an underestimate of covered services providers to small plans if a substantial number of the service providers only service small plans. The Department, however, believes that its estimated number of covered service providers is reasonable, because most small plans use the same service providers as large plans.[27] The Department invites comments regarding this estimate.

5. Benefits

The Department expects that amending its current regulation defining the circumstances under which a person is a fiduciary under ERISA as a result of providing investment advice will discourage harmful conflicts, improve service value, and enhance the Department’s ability to redress abuses and more effectively and efficiently allocate its enforcement resources. Although the Department is unable to quantify these benefits, the Department tentatively concludes they would justify their cost.

a. Discouraging Harmful Conflicts

Harmful arrangements generally are those that are tainted by unmitigated conflicts. These arrangements occur when a plan’s service providers strike deals that profit one another at the plan’s expense or subordinate the plan’s interest to someone else’s. As mentioned earlier, in a 2005 report,[28] SEC staff identified certain undisclosed arrangements in the business practices of pension consultants that can give rise to conflicts of interest. The SEC found that the objectivity of advice provided by the examined pension consultants was called into question, because many pension consultants provided services both to pension plans who are their clients and money managers. In the report, the SEC stated that this raises concerns that pension consultants may steer clients to certain money managers and other vendors based on the consultant’s other business relationships and receipt of fees from these firms, rather than because selecting the money manager or other vendor was in the best interest of the plan and its participants and beneficiaries.

Also, as noted earlier in this Regulatory Impact Analysis, a recent GAO study links undisclosed conflicts with 130 basis points of underperformance in defined benefit pension plans.[29] A variety of academic studies further support the hypothesis that conflicts often erode the value provided to defined contribution pension plans by mutual funds and their distribution channels.[30]

Beneficial arrangements generally are those in which a plan’s service providers, in competition to provide the best value to the plan, deliver high quality services to the plan at the lowest cost, and act solely in the interest of their plan clients and the plan’s participants and beneficiaries. According fiduciary status to certain service providers that provide investment advice and valuation services to plans and their participants, and subjecting them to the full extent of remedies under ERISA, would discourage harmful conflicts and create

[27] While in general small plans are not required to file a Schedule C, some voluntarily file. Looking at Schedule C filings by small plans, the Department verified that most small plans reporting data on Schedule C used the same group of service providers as larger plans.

[28] *See* U.S. Securities and Exchange Commission, Office of Compliance Inspections and Examinations, Staff Report Concerning Examination of Select Pension Consultants, p. 5 (Washington, DC: May 16, 2005).

[29] *See,* GAO, *Conflicts of Interest Can Affect Defined Benefit and Defined Contribution Plans,* GAO–09–503T, Testimony Before the Subcommittee on Health, Employment, Labor and Pensions, Education and Labor Committee, House of Representatives (March 24, 2009), accessible at *http://www.gao.gov/new.items/d09503t.pdf.*

[30] Examples include: Daniel B. Bergstresser *et al.,* Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry, Social Science Research Network Abstract 616981 (Sept. 2007). Mercer Bullard *et al.,* Investor Timing and Fund Distribution Channels, Social Science Research Network Abstract 1070545 (Dec. 2007). Xinge Zhao, The Role of Brokers and Financial Advisors Behind Investment Into Load Funds, China Europe International Business School Working Paper (Dec. 2005), at *http://www.ceibs.edu/faculty/zxinge/brokerrole-zhao.pdf.*

more beneficial arrangements in the pension plan service provider market by deterring service providers from engaging in self-dealing, acting imprudently, and subordinating their plan clients' interests to other interests due to the liability exposure and negative publicity that would result from being sued for a fiduciary breach under ERISA.

b. Improved Service Value

Under the proposal, certain service providers that are not fiduciaries under the Department's current regulation would be determined to be fiduciaries under ERISA. Based on this change, the Department expects that affected service providers will modify their business practices to ensure that they act solely in the interests of their employee benefit plan clients and the plans' participants and beneficiaries as required by section 404 of ERISA. Therefore, plans should receive better value for the service fees they pay. Advisers are more likely to act in accordance with ERISA's high fiduciary standards if they know that they may be held to them. Where a plan suffers a loss because of an investment adviser's imprudence or actions contrary to the plan's interests, the plan will have remedies under ERISA to recoup its losses and disgorge the adviser's ill-gotten gains. This should provide the ancillary benefit of improved returns on plan assets and larger account balances for participants and beneficiaries of individual account plans.

While the improvement in service value that may result from the proposed rule is difficult to quantify, the Department believes that it has the potential to be very large. If just 10 percent of plans realize a one basis point (0.01 percent of plan assets) service value improvement, it would be worth approximately $399 million over ten years using a seven percent discount rate and reporting in 2010 dollars. In addition, GAO's study linking undisclosed conflicts with 130 basis points of underperformance suggests that value can be improved via service quality as well as price.[31] Viewed in this context, the Department is confident that service value improvement could be substantial as a result of the proposed rule and may be economically significant (*i.e.,* exceed $100 million annually).

c. Improve Department's Ability To Redress Abuse and Improve Enforcement Resource Allocation

Amending the Department's current regulation by broadening the scope of service providers that would be considered fiduciaries would enhance the Department's ability to redress service provider abuses that currently exist in the market, such as undisclosed fees, misrepresentation of compensation arrangements, and biased appraisals of the value of employer securities and other plan investments.[32] It also would allow the Department to more effectively and efficiently allocate its enforcement resources, which would directly benefit plans and their participants and beneficiaries by providing greater protections than are available under the current regulation.

Specifically, the proposed rule would improve the Department's ability to redress abuse, provide additional protection to plans and their participants and beneficiaries, and allocate its enforcement resources by:

- Including as fiduciary investment advice appraisals and fairness opinions concerning value of securities or other property;
- According fiduciary status to persons who render investment advice for a fee to a plan, its participants or beneficiaries and directly or indirectly represent or acknowledge that they are acting as a fiduciary within the meaning of ERISA in rendering the advice; and
- Expediting the resolution of difficult factual questions and enforcement challenges by removing the requirements in the current regulation's five-part test that investment advice must be provided on a regular basis based on the parties' mutual understanding and that the advice will serve as a primary basis for plan investment decisions.

These benefits are discussed in more detail below.

Appraisals and Valuation Opinions: As discussed earlier in this preamble, EBSA's national ESOP enforcement project is focused on identifying and correcting violations of ERISA in connection with ESOPs, which are designed to invest primarily in employer securities. A common violation found in the ESOP national enforcement project arises in cases where plan fiduciaries have reasonably relied on faulty valuations of securities prepared by professional appraisers. The proposed rule, which would supersede AO 76–65A, and therefore would apply to appraisals and fairness opinions rendered in connection with plan investment transactions would align the duties of persons who provide appraisals with those of fiduciaries who rely on these appraisals. As noted above, the provision in the proposed rule is not limited to employer securities.

Persons Holding Themselves Out as Fiduciaries: The proposed rule provides that a person is a fiduciary if it (1) renders investment advice described in the proposal to a plan, plan fiduciary, or plan participant or beneficiary for a fee or other compensation and (2) directly or indirectly represents or acknowledges that it is acting as a fiduciary within the meaning of ERISA with respect to the plan in rendering the advice. Many pension plans rely heavily on the expert guidance provided by consultants and other advisers in managing the investment of plan assets. The Department believes that claiming ERISA fiduciary status enhances the adviser's influence, and gives the advice recipient a reasonable expectation that the advice will be impartial and prudent. Therefore, the proposed rule provides that such a representation or acknowledgment in connection with advice is sufficient to constitute investment advice under the proposal which, if rendered for a direct or indirect fee or other compensation, would result in fiduciary status under section 3(21)(A)(ii) of ERISA.

Simplifying Current Rule's Five-Part Test: As stated earlier in this preamble, EBSA's CAP project focuses on the receipt of improper, undisclosed compensation by pension consultants and other investment advisers, and whether the receipt of such compensation violates ERISA, because the adviser/consultant used its position with a benefit plan to generate additional fees for itself or its affiliates. One of the most substantial impediments confronting CAP investigators when bringing enforcement actions under the CAP program is proving that all elements of the current rule's five-part test are met. As stated earlier, CAP investigators spend an inordinate amount of time gathering evidence to satisfy all elements of the five-part test rather than focusing on the misconduct involved in a particular case.

The proposed rule would remove this impediment by eliminating the

[31] *See,* GAO, *Conflicts of Interest Can Affect Defined Benefit and Defined Contribution Plans,* GAO–09–503T, Testimony Before the Subcommittee on Health, Employment, Labor and Pensions, Education and Labor Committee, House of Representatives (March 24, 2009), accessible at *http://www.gao.gov/new.items/d09503t.pdf.*

[32] Please note that Department's proposal also would benefit participants and beneficiaries of ERISA-covered plans, because section 502(a)(2) of ERISA allows them to assert a private right of action against plan fiduciaries who breach any of the responsibilities, obligations, or duties imposed on fiduciaries under Title I of ERISA.

requirement that advice must be provided on a "regular basis." This condition bears no necessary relationship to the importance of the advice to the plan or the culpability of the adviser. The proposal also does not require the parties to have a mutual understanding that the advice will serve as a "primary basis" for plan investment decisions. This should allow EBSA to more efficiently allocate its enforcement resources, because investigators no longer would need to devote disproportionate time to prove that these elements of the five-part test are met.

6. Costs

The Department estimated the costs for the proposal over the ten-year time frame for purposes of this analysis and used information from the quantitative characterization of the service provider market presented above as a basis for these cost estimates. This characterization did not account for all service providers, but it does provide information on the segments of the service provider industry that are likely to be most affected by the proposal (*i.e.*, those who provide investment- and valuation-related services to employee benefit plans).

Most of the cost of the rule would be imposed on affected plan service providers. These service providers would need to review the proposed rule and determine whether their current service provider contracts and arrangements with plans, or activities carried out pursuant to them, would make them fiduciaries under the proposal.

For purposes of this analysis, the Department assumes that all affected service providers will incur these initial compliance review costs. The Department believes that service providers will need to review their entire book of business, not each individual transaction or a plan-by-plan review, to determine whether they are fiduciaries, because service providers will enter into agreements with plans to provide similar types of services. The Department assumes that affected service providers will require on average 16 hours of legal professional time at a cost of approximately $119 per hour to perform the compliance review. Based on the foregoing, this cost is estimated to be approximately $10.1 million in the first year.

The Department also has estimated the initial compliance review and implementation costs for service providers newly entering the market ("new service providers") to provide services to plans (either for the first time or by re-entry) beginning in 2012 and each year thereafter. The Department assumes that about eight percent of all service providers will be new in each year subsequent to 2011,[33] and that these service providers will incur the same compliance review and implementation costs as existing service providers. Based on the foregoing, the Department estimates that new service providers will incur costs of approximately $845,000 in 2012 and thereafter. Estimates of the cost of the rule over the first ten years are reported in Table 2, below.

The Department's estimate regarding the time required for service providers to complete the compliance review to determine whether they are fiduciaries under the proposal as a result of providing investment advice to a plan or a plan participant or beneficiary is based on an average cost for large and small service providers to conduct the review. In developing this estimate, the Department has accounted for the fact that large service providers may require more time than small service providers to complete the compliance review due to the wide range of services they provide and the complexity of their business arrangements and affiliate relationships. The Department believes that the burden for service providers to complete the compliance review is mitigated by the fact that the proposal sets forth discrete types of advice and recommendations that constitute investment advice for purposes of ERISA section 3(21)(A)(ii). The Department welcomes public comments regarding this estimate.

TABLE 2—MONETIZED COSTS OF RULE (2010 DOLLARS)

Year	Cost of legal review undiscounted (A)	Total 3% discounting	Total 7% discounting
2011	$10,138,000	$10,138,000	$10,138,000
2012	845,000	820,000	790,000
2013	845,000	796,000	738,000
2014	845,000	773,000	690,000
2015	845,000	751,000	644,000
2016	845,000	729,000	602,000
2017	845,000	708,000	563,000
2018	845,000	687,000	526,000
2019	845,000	667,000	492,000
2020	845,000	647,000	460,000
Total	17,741,000	16,715,000	15,642,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

7. Regulatory Alternatives

As discussed elsewhere in the preamble to the proposal, plan service providers that fall within the Department's rule might experience increased costs and liability exposure associated with ERISA fiduciary status. Consequently, these service providers might charge higher fees to plan clients, or limit or discontinue the availability of their services or products to ERISA plans. As further discussed below, the Department considered but rejected two regulatory alternatives, because these alternatives could lead to higher fees for plans and a compression of the plan service provider market.

[33] Estimate based on the Department's comparison of data reported on the 2005 and 2006 Form 5500.

In developing this proposal, the Department sought to broaden the scope of the persons treated as ERISA fiduciaries, without creating an overly-broad or ambiguous standard that might unnecessarily disadvantage plans. As an alternative, the Department considered a proposal that would replace the current regulatory definition with the language of section 3(21)(A)(ii) of ERISA, which provides simply that a person is a fiduciary if it renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan, or has any authority or responsibility to do so. However, the Department believes this approach would not provide sufficient clarity for persons to determine whether they are ERISA fiduciaries. Without a sufficiently clear standard, a broad range of plan service providers, in order to mitigate or avoid any potential risks, might simply presume fiduciary status and charge higher fees to plan clients, or limit or discontinue the availability of their services or products to ERISA plans. The Department rejected this alternative. The Department's proposal attempts to identify fiduciaries based on readily-ascertainable criteria related to their degree of authority, control, responsibility or influence and the expectations of the parties involved.

The Department considered another alternative that would not have included in the proposal an explicit limitation applicable to service providers that offer of a "platform" of investment options. Defined contribution plans that permit participants to direct the investment of assets allocated to their accounts have become increasingly popular. Often, the service provider offering a platform, as an incidental part of its overall services, also provides the plan sponsor with general information and assistance in assessing the investments available for inclusion in the plan's platform. The Department rejected this alternative, because if the proposal does not provide sufficient clarity as to whether their activities related to offering an investment platform would result in fiduciary status, these service providers might increase their fees, limit the types of investment-related information made available to plan sponsors, or cease offering their services to plans. In order to provide clarity, the Department's proposal attempts to describe the circumstances under which merely offering a platform of investment options, and certain incidental services, will not cause a person to become an ERISA fiduciary.

8. Uncertainty

The Department's estimates of the effects of this proposed rule are subject to uncertainty. The Department is confident that adopting a new definition of the term "fiduciary" should discourage harmful conflicts of interest, improve service value, and enhance the Department's ability to redress abuses and more effectively and efficiently allocate its enforcement resources. However, it is uncertain about the magnitude of these benefits and potential costs. It is possible this rule could have a large market impact.

For example, the Department is uncertain regarding whether, and to what extent, service provider costs would increase due to the proposed rule, and if so, whether the increased cost would be passed on to plans. The Department expects that more service providers would be determined to be fiduciaries under the proposed rule than under the current regulation. These service providers could experience higher costs of doing business due to the increased liability exposure that is associated with ERISA fiduciary status, such as fiduciary liability insurance costs, which could result in higher fees for their plan clients. The Department also is uncertain whether the service provider market will shrink because some service providers would view the increased costs and liability exposure associated with ERISA fiduciary status as outweighing the benefit of continuing to service the ERISA plan market. The Department does not have enough information to provide a specific number. However, it is possible that many plans currently employ service providers who would be considered fiduciaries for the first time under the proposal.

Also, if more service providers are fiduciaries, more transactions would violate the self-dealing prohibitions contained in ERISA section 406(b). In order to avoid committing prohibited transactions, affected service providers would have to identify transactions that would be prohibited because they involve self-dealing, restructure these transactions, and modify their business practices in the absence of an applicable statutory, class, or individual prohibited transaction exemption. The Department is uncertain regarding the number of transactions that would have to be restructured, whether an applicable prohibited transaction exemption would be available for such transactions, and if not, the number of prohibited transactions exemption applications the Department could expect to receive regarding the transactions. The Department welcomes public comments regarding this issue.

The Department believes its assumptions are reasonable based on the available information and tentatively concludes that the proposed regulation's benefits would justify its costs. The Department invites comments that will help it assess the impact of areas where it is uncertain.

9. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Department's IRFA of the proposed rule is provided below.

a. Need for and Objectives of the Rule

The Department has determined that regulatory action is necessary to adopt a definition of the term "fiduciary" that more closely reflects the broad statutory definition of the term, recognizes the diverse and complex fee practices that exist in today's plan service provider market and their potential conflicts, accounts for the shift from DB to DC plans, expands the scope of fiduciary protections for plans and their participants and beneficiaries, and permits EBSA investigators and attorneys to focus their efforts on the adviser's conduct rather than meeting the evidentiary requirements necessary to prove that all elements of the current regulation's five-part test are satisfied. As discussed in further detail in the regulatory impact analysis above, the Department believes that amending the current regulation by broadening the scope of service providers, regardless of size, that would be considered fiduciaries would enhance the Department's ability to redress service provider abuses that currently exist in the plan service provider market, such as undisclosed fees, misrepresentation of compensation arrangements, and biased appraisals of the value of employer securities and other plan investments.

b. Affected Small Entities

The Department is unable to estimate the number of small service providers that would be affected by the proposal. These service providers generally consist of professional service enterprises that provide a wide range of services to plans, such as investment management or advisory services for plans or plan participants, and appraisal, consulting, brokerage, pension insurance advisory services, investment evaluations, or valuation services. Many of these service providers have special education, training, and/or formal credentials in fields such as ERISA and benefits administration, employee compensation, taxation, actuarial science, or finance.

The Small Business Administration considers service providers with annual revenues of less than $7 million to be small entities. Using data from Schedule C of the Department's 2007 Form 5500, which generally is used by plans with over 100 participants to report service providers that rendered services to or had transactions with the plan and received $5,000 or more in total direct or indirect compensation, the Department estimates that about 130 of the 5,300 affected service providers have total revenues reported on the Schedule C of over $7 million. Based on the foregoing, there would be 5,170 service providers with revenues of less than $7 million; however, this estimate overstates the total number of small entities that would be affected by the proposal, because it does not include revenues from the nearly 626,000 small plans that are not required to file the Schedule C and revenues from other sources.

c. Impact of the Proposal

Small entities that are determined to be fiduciaries under the Department's proposal will be required to act solely in the interest of their plan clients and participants and beneficiaries in connection with covered services. The Department believes that amending the current regulation to reflect additional circumstances where an investment advice provider is in a position of authority, control, responsibility, or influence with respect to a plan and its investment decisions is a critical component of protecting the interest of plans and the retirement income security of participants and beneficiaries.

The Department also is unable to estimate the increased business costs small entities would incur if they were determined to be fiduciaries under the proposal. Such costs would include the expense of purchasing fiduciary liability insurance due to the increased liability exposure that is associated with ERISA fiduciary status. The Department estimates that, on average, affected service providers would incur a cost of $1,900 to determine whether a service provider's contracts and arrangement with plans, or activities carried out pursuant to them, would make the service provider a fiduciary under the proposed rule.

It is possible that some small service providers may find that the increased costs associated with ERISA fiduciary status outweigh the benefit of continuing to service the ERISA plan market; however, the Department does not have sufficient information to determine the extent to which this will occur. It is possible that the economic impact of the rule on small entities would not be as significant as it would be for large entities, because generally, small entities do not have as many business arrangements that give rise to conflicts of interest. Therefore, they would not be confronted with significant costs to restructure transactions that would be faced by large entities.

The Department invites comments regarding all aspects of this IRFA.

10. Paperwork Reduction Act

The proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. section 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. section 3502(3).

11. Congressional Review Act

The proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The proposed rule is a "major rule" as that term is defined in 5 U.S.C. 804, because it is likely to result in an annual effect on the economy of $100 million or more.

12. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

13. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications, because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed rule have no implications for the States or the relationship or distribution of power between the national government and the States.

Statutory Authority

This regulation is proposed pursuant to the authority in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

For the reasons set forth in the preamble, Chapter XXV, subchapter F, part 2510 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2510—DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Secs. 2510.3–101 and 2510.3–102 also issued under sec. 102 of Reorganization Plan

No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Section 2510.3–38 also issued under Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

2. In § 2510.3–21, revise paragraph (c) to read as follows:

§ 2510.3–21 Definition of "Fiduciary."

* * * * *

(c) *Investment advice for a fee.* (1) *General.* Except as provided in paragraph (c)(2) of this section, a person renders "investment advice" for a fee or other compensation, direct or indirect, to an employee benefit plan, within the meaning of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (the Act) and this paragraph, if:

(i) Such person—

(A)(*1*) Provides advice, or an appraisal or fairness opinion, concerning the value of securities or other property,

(*2*) Makes recommendations as to the advisability of investing in, purchasing, holding, or selling securities or other property, or

(*3*) Provides advice or makes recommendations as to the management of securities or other property,

(B) To a plan, a plan fiduciary or a plan participant or beneficiary;

(ii) Such person either directly or indirectly (*e.g.*, through or together with any affiliate)—

(A) Represents or acknowledges that it is acting as a fiduciary within the meaning of the Act with respect to providing advice or making recommendations described in paragraph (c)(1)(i) of this section;

(B) Is a fiduciary with respect to the plan within the meaning of section 3(21)(A)(i) or (iii) of the Act;

(C) Is an investment adviser within the meaning of section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); or

(D) Provides advice or makes recommendations described in paragraph (c)(1)(i) of this section pursuant to an agreement, arrangement or understanding, written or otherwise, between such person and the plan, a plan fiduciary, or a plan participant or beneficiary that such advice may be considered in connection with making investment or management decisions with respect to plan assets, and will be individualized to the needs of the plan, a plan fiduciary, or a participant or beneficiary.

(2) *Limitations.* (i) For purposes of this paragraph (c), a person shall not be considered to be a person described in paragraph (c)(1) of this section with respect to the provision of advice or recommendations if, with respect to a person other than a person described in paragraph (c)(1)(ii)(A), such person can demonstrate that the recipient of the advice knows or, under the circumstances, reasonably should know, that the person is providing the advice or making the recommendation in its capacity as a purchaser or seller of a security or other property, or as an agent of, or appraiser for, such a purchaser or seller, whose interests are adverse to the interests of the plan or its participants or beneficiaries, and that the person is not undertaking to provide impartial investment advice.

(ii) For purposes of this paragraph (c), the following acts in connection with an individual account plan (as defined in section 3(34) of the Act) shall not, in and of themselves, be treated as the rendering of investment advice for purposes of section 3(21)(A)(ii):

(A) Provision of investment education information and materials within the meaning of 29 CFR 2509.96–1(d);

(B) Marketing or making available (*e.g.,* through a platform or similar mechanism), without regard to the individualized needs of the plan, its participants, or beneficiaries, securities or other property from which a plan fiduciary may designate investment alternatives into which plan participants or beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts, if the person making available such investments discloses in writing to the plan fiduciary that the person is not undertaking to provide impartial investment advice;

(C) In connection with the activities described in paragraph (c)(2)(ii)(B), the provision of general financial information and data to assist a plan fiduciary's selection or monitoring of such securities or other property as plan investment alternatives, if the person providing such information or data discloses in writing to the plan fiduciary that the person is not undertaking to provide impartial investment advice.

(iii) For purposes of paragraph (c)(1)(i) of this section, the term "advice, or appraisal or fairness opinion" shall not include the preparation of a general report or statement that merely reflects the value of an investment of a plan or a participant or beneficiary, provided for purposes of compliance with the reporting and disclosure requirements of the Act, the Internal Revenue Code, and the regulations, forms and schedules issued thereunder, unless such report involves assets for which there is not a generally recognized market and serves as a basis on which a plan may make distributions to plan participants and beneficiaries.

(3) *Fee or other compensation.* For purposes of this paragraph (c) and section 3(21)(A)(ii) of the Act, a fee or other compensation, direct or indirect, received by a person for rendering investment advice means any fee or compensation for the advice received by the person (or by an affiliate) from any source and any fee or compensation incident to the transaction in which the investment advice has been rendered or will be rendered. The term fee or compensation includes, for example, brokerage, mutual fund sales, and insurance sales commissions. It includes fees and commissions based on multiple transactions involving different parties.

(4) *Internal Revenue Code.* Section 4975(e)(3)(B) of the Internal Revenue Code of 1986 (Code) contains provisions parallel to section 3(21)(A)(ii) of the Act which define the term "fiduciary" for purposes of the prohibited transaction provisions in Code section 4975. Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 214 (2000 ed.) transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. All references herein to section 3(21)(A)(ii) of the Act should be read to include reference to the parallel provisions of section 4975(e)(3)(B) of the Code. Furthermore, the provisions of this paragraph (c) shall apply for purposes of the application of Code section 4975 with respect to any plan described in Code section 4975(e)(1).

(5) A person who is a fiduciary with respect to a plan by reason of rendering investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or having any authority or responsibility to do so, shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such person does not have any discretionary authority, discretionary control or discretionary responsibility, does not exercise any authority or control, does not render investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, and does not have any authority or responsibility to render such investment advice, provided that nothing in this paragraph shall be deemed to:

(i) Exempt such person from the provisions of section 405(a) of the Act concerning liability for fiduciary breaches by other fiduciaries with respect to any assets of the plan; or

(ii) Exclude such person from the definition of the term "party in interest" (as set forth in section 3(14)(B) of the Act) with respect to any assets of the plan.

* * * * *

Signed at Washington, DC, this 13th day of October 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–26236 Filed 10–21–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Pamlico Sound and Adjacent Waters, NC; Danger Zones for Marine Corps Operations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations to establish one new danger zone in Pamlico Sound near Marine Corps Air Station Cherry Point, North Carolina. Establishment of this danger zone will enable the Marine Corps to control access and movement of persons, vessels, and objects within the danger zone during live fire training exercises.

DATES: Written comments must be received by November 22, 2010.

ADDRESSES: You may submit comments, identified by docket number COE–2010–0037, by any of the following methods:

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

E-mail: david.b.olson@usace.army.mil. Include the docket number COE–2010–0037 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2010–0037. All comments received will be included in the public docket without change and may be made available on-line at *http://regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Richard K. Spencer, U.S. Army Corps of Engineers, Wilmington District, at 910–251–4172.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR part 334 by adding § 334.420 (b)(1)(v) to establish an Intermittent Danger Zone abutting the existing 1.8 mile Danger Zone [as described in § 334.420(b)(1)(i)] in the Pamlico Sound and adjacent waters in Carteret County, North Carolina. The public is currently restricted from accessing the existing 1.8 mile radius circular area and has limited access to three additional 0.5 mile radius circular danger zones described at §§ 334.420(b)(1)(ii), (iii), and (iv), but has unrestricted access to the surrounding waters. To better protect the public from potentially hazardous conditions during scheduled live fire training, Marine Corps Air Station Cherry Point has requested that the Corps establish the Intermittent Danger Zone that will enable the Marine Corps to ensure security and safety for the public.

The current military training mission requires enhanced public safety and protection of vessels that operate in the vicinity of the Bombing Target-11 range. This proposed amendment to the current danger zone regulation at 33 CFR 334.420 includes the addition of a danger zone in Pamlico Sound that abuts the existing 1.8 mile radius danger zone and extends out to 2.5 miles from the common center point. Establishment of this additional danger zone will allow the Marine Corps to minimize the public safety hazard resulting from the increased use of .50 caliber weapons firing from rotary-wing aircraft and small boats during training exercises at Bombing Target-11 Range. The new danger zone will optimize public safety and military training, and protect any vessels that operate in the vicinity of Bombing Target-11 Range.

Procedural Requirements

a. *Review Under Executive Order 12866.* This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The Corps has determined that revising this proposed rule would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps expects that the proposed rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. After the comment period, an environmental assessment will be prepared and it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* The proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this proposed rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. In § 334.420 add paragraphs (b)(1)(v) and (b)(2)(iii) to read as follows:

§ 334.420 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.

* * * * *

(b) * * *

(1) * * *

(v) The waters within a circular band with an inner radius of 1.8 statute miles and an outer radius of 2.5 statute miles having its center at latitude 35°02′12″, longitude 76°28′00″.

(2) * * *

(iii) The areas described in paragraph (b)(1)(v) of this section shall be used as a strafing area. Practice and dummy ammunition will be used. Operations will be conducted on five consecutive days (Monday through Friday) per month during the months of February through November between the hours of 4 p.m. to 11 p.m. The block training dates will be scheduled two weeks in advance of the actual training start date. Marine Corps Air Station, Cherry Point will have a call-in number for public use to provide information on the current use of the training area. The Notification to Mariners System will also be utilized to inform the public on the status of the training area. No vessel or person shall enter the area during the scheduled block training session except for such vessels as may be directed by the enforcing agency to enter on assigned duties. The area will be patrolled and vessels "buzzed" by the patrol plane prior to the conduct of operations in the area. Vessels or personnel which have inadvertently entered the danger zone shall leave the area immediately upon being so warned.

* * * * *

Dated: October 8, 2010.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–26442 Filed 10–21–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AN75

Schedule for Rating Disabilities; AL Amyloidosis (Primary Amyloidosis)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (rating schedule) by updating the schedule of ratings for the hemic and lymphatic systems to include AL amyloidosis. This regulatory action is necessary to add AL amyloidosis as one of the disease conditions and establish criteria for disability evaluation to fully implement the decision by the Secretary of Veterans Affairs to grant presumptive service connection based on herbicide exposure for this disease. The intended effects are to provide consistency in disability ratings and to ease tracking of AL amyloidosis for statistical analysis.

DATES: Comments must be received by VA on or before December 21, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN75—Schedule for Rating Disabilities; AL Amyloidosis (Primary Amyloidosis)." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** at 74 FR 21258 amending 38 CFR 3.309(e) by adding AL amyloidosis to the list of diseases associated with exposure to certain herbicide agents. Currently, the rating schedule does not have a diagnostic code for AL amyloidosis. As an unlisted condition, it is rated by analogy to non-Hodgkin's lymphoma using the "built-up" diagnostic code 7799–7715. However, AL amyloidosis is not part of the group of diseases under the non-Hodgkin's lymphoma classification, but a disorder of the bone marrow characterized by the accumulation and deposition of abnormal, insoluble proteins called light chain amyloid proteins in any organ of the body, interfering with the structure and function of the organ. Therefore, AL amyloidosis requires a set of evaluation criteria with a unique diagnostic code, which will serve as a basis for disability rating. VA proposes a regulation that would amend the rating schedule by adding rating guidance and a diagnostic code specifically for AL amyloidosis.

AL amyloidosis is a seriously disabling, progressive, and incurable condition. It is usually fatal within 1 to 2 years of diagnosis. Because of its rarity and rapid progression, AL amyloidosis may not be diagnosed until it has resulted in considerable multi-organ damage (to heart, kidney, liver, spleen, intestine, *etc.*). At the time of diagnosis, the most common findings are nephrotic syndrome with or without renal insufficiency, congestive cardiomyopathy, peripheral neuropathy, and hepatomegaly. The extent of the disease limits the specific types of treatments that can be used. Stem cell transplantation with high dose chemotherapy, an aggressive and risky treatment with serious side effects and a significant mortality rate, can be used in a limited number of patients who meet the criteria to undergo such severe treatment. This treatment has shown promise in prolonging life but does not cure the disease. Accumulations of amyloid in a specific area of the body can sometimes be removed surgically. Organ transplants (for example, of a kidney or the heart) have extended the lives of a small number of people with organ failure due to amyloidosis but eventually the transplanted organ accumulates amyloid. In general, treatment can slow the course of the disease and help alleviate the symptoms of organ damage, but it is not curative.

AL amyloidosis is a disease most closely aligned with other diseases of the hemic and lymphatic systems. Therefore, VA proposes diagnostic code 7717 for AL amyloidosis because it is the first available diagnostic code in the Hemic and Lymphatic Systems listed in § 4.117.

VA proposes to assign a 100 percent rating because the disease is incurable and progressive, generally causing death in a few years. While AL amyloidosis may or may not be totally disabling at the time of diagnosis or time of claim for VA compensation, its clinical course is usually associated with rapid disease progression and involvement of multiple organ systems. The usual cause of death is cardiac, hepatic, or renal failure, or infection. The median survival rate for AL amyloidosis is 12–18 months in the United States. Providing a 100-percent evaluation in all cases would obviate the need to reassess and reevaluate veterans with AL amyloidosis repeatedly over a short period of time. Because of the poor prognosis, no follow-up examination will be required for re-evaluation of this disability rating.

We also propose to refer to AL amyloidosis as "primary amyloidosis", which is another common name for the same disease. Although the disease may also be identified as "immunocyte-derived amyloidosis" and "light chain-related amyloidosis", these terms for the disease are much less common. Therefore, we propose not to include them under diagnostic code 7717 because their inclusion would not be useful to the public or VA personnel.

Finally, we propose to amend 38 CFR Part 4, Appendices A, B, and C to reflect the proposed addition of diagnostic code 7717 for AL amyloidosis to the rating schedule.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule will not directly affect small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

Paperwork Reduction Act

This action contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 4, 2010, for publication.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Dated: October 18, 2010.

Robert C. McFetridge,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 4 as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

§ 4.117 [Amended]

2. In § 4.117, add diagnostic code 7717, immediately following the note at the end of diagnostic code 7716, to read as follows:

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

	Rating
* * * * *	
7717 AL amyloidosis (primary amyloidosis)	100
* * * * *	

Appendix A to Part 4 [Amended]

3. In Appendix A to Part 4, under Sec. 4.117, add diagnostic code 7717 in numerical order (following diagnostic code number 7716) to the table to read as follows:

APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

Sec.	Diagnostic Code No.	
*	*	* * * * *
4.117		
*	*	* * * * *
	7717	Added [*Date 30 days after date of publication of the final rule in the* ***Federal Register***].

Appendix B to Part 4 [Amended]

4. In Appendix B to Part 4 add diagnostic code 7717 to the table in numerical order (following the entry for diagnostic code number 7716) and its disability entry "AL amyloidosis (primary amyloidosis)" to read as follows:

APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES

Diagnostic Code No.	
*	* * * * * *
THE HEMIC AND LYMPHATIC SYSTEMS	
*	* * * * * *
7717	AL amyloidosis (primary amyloidosis).
*	* * * * * *

Appendix C to Part 4 [Amended]

5. Appendix C to Part 4 is amended by adding in alphabetical order (following "Agranulocytosis") a new entry "AL amyloidosis" and its diagnostic code number "7717" to read as follows:

APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES

	Diagnostic Code No.
* * * *	*
AL amyloidosis	7717
* * * *	*

[FR Doc. 2010–26661 Filed 10–21–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket Numbers NIOSH–221, NIOSH–082A, NIOSH–147]

Public Meeting To Discuss NIOSH's Respirator Standards Development Efforts

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of a public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), National Personal Protective Technology Laboratory (NPPTL), will conduct a public meeting to discuss current respirator standards development projects, including the NIOSH Regulatory Agenda for updating 42 CFR part 84, CBRN Combination Unit Respirator Performance Requirements, and the NIOSH policy on SCBA "Buddy-Breathing". There will be an opportunity for discussion following each topic's presentations.

DATES: The public meeting will be held 8:30 a.m. to 5 p.m., December 9, 2010. On-site registration will be held beginning at 7:45 a.m.

ADDRESSES: The public meeting will be held at Hyatt Regency Pittsburgh International Airport, 1111 Airport Boulevard, Pittsburgh, PA 15231, telephone 800–233–1234.

FOR FURTHER INFORMATION CONTACT: Jonathan Szalajda, NPPTL, Policy and Standards Development Branch Chief, P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone 412–386–5200, fax 412–386–4089, E-mail *npptlevents@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public, limited only by the space available. The meeting room accommodates approximately 125 people.

Instructions: Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Requests may also be submitted by telephone 513–533–8611, fax 513–533–8285, or e-mailed to *niocindocket@cdc.gov.* All requests to present should contain the name, address, and telephone number, relevant business affiliations of the presenter, topic of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentations, NIOSH will notify the presenters that their presentations are scheduled. If a participant is not present when his/her presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

This meeting will also be using Audio/Live Meeting Conferencing, remote access capabilities where interested parties may listen in and review the presentations over the internet simultaneously. Parties remotely accessing the meeting will have the opportunity to ask questions during the open comment period. To register to use this capability, please contact the NPPTL, Policy and Standards Development Branch, P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone 412–386–5200, fax 412–386–4089. This option will be available to participants on a first come, first served basis and is limited to the first 50 participants.

Background: NIOSH, National Personal Protective Technology Laboratory (NPPTL), will present information to attendees concerning the development of the concepts being considered for performance criteria of various classes of respirators. Participants will be given an opportunity to ask questions and to present individual comments that they may wish to have considered.

Reference: Information regarding documents that will be discussed at the meeting may be obtained from the NIOSH Web site using this link: *http://www.cdc.gov/niosh/review/public/* using the docket numbers listed in this notice.

Authority: 29 U.S.C. 651–675, 677; 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

Dated: October 12, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–26129 Filed 10–21–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS–3140–P]

RIN 0938–AP32

Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Hospice Services

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the requirements that an institution would have to meet in order to qualify to participate as a skilled nursing facility (SNF) in the Medicare program, or as a nursing facility (NF) in the Medicaid program. We are proposing these requirements to ensure that long-term care (LTC) facilities (that is, SNFs and NFs) that chose to arrange for the provision of hospice care through an agreement with one or more Medicare-certified hospice providers would have in place a written agreement with the hospice that specified the roles and responsibilities of each entity.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 21, 2010.

ADDRESSES: In commenting, please refer to file code CMS–3140–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" and enter the file code to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3140–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3140–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Trish Brooks, (410) 786–4561. Marcia Newton, (410) 786–5265. Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

According to CMS data, at any point in time, approximately 1.4 million elderly and disabled nursing home residents are receiving care in nearly 16,000 Medicare- and Medicaid-certified Long-Term Care (LTC) facilities in the United States. More than 20 percent of older Americans die in nursing homes. (Johnson, Sandra H., Hastings Center Report, *Making Room for Dying: End of Life Care in Nursing Homes;* November/December 2005, Special Report 35 (6), S37–S41.) Therefore, providing care at the end of life, particularly palliative care, is an important part of nursing home care.

Palliative care means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care in an LTC facility involves addressing physical, intellectual, emotional, social, and spiritual needs, as well as facilitating resident autonomy, access to information, and choice throughout the continuum of illness. Palliative care independent of the hospice benefit may also be provided by LTC facilities, which may eliminate the need for hospice services for their residents.

Hospice care is provided for terminally ill individuals with a prognosis of 6 months or less if their terminal illness runs its normal course. These patients have elected to forgo curative care and wish to remain in their place of residence. A Medicare-certified hospice provides services in family homes, LTC facilities, and any other dwelling that individuals call "home." Hospice care may also be provided while individuals are hospitalized. According to a March 2000 Office of the Assistant Secretary for Planning and Evaluation's (ASPE) study, entitled "Use of Medicare's Hospice Benefit by Nursing Facility Residents," nursing facilities served approximately 35 percent of all hospice beneficiaries in some markets. The study concluded, "hospice in nursing homes is a very prevalent phenomenon," but added that "Guidelines are * * * needed to clarify the need for nursing facilities to provide palliative care and the roles and responsibilities of hospices and nursing facilities when treating a hospice patient. Minimal contract provisions affecting the two types of providers when treating residents enrolled in hospice are needed as well." (*http://aspe.hhs.gov/daltcp/reports/2000/samhbes.htm.*)

Under current regulations, an LTC facility may choose to have a written agreement with one or more hospice providers to provide hospice care to a Medicare eligible resident who wishes to elect the hospice benefit. However, if the facility chooses not to contract with a Medicare-certified hospice to provide hospice services for the resident who wishes to elect the benefit, the LTC facility is responsible for assisting the resident in transferring to a facility that will arrange for the provision of such services, as requested by the resident. (*See* 42 CFR 483.12(a)(2)(i), Transfer and discharge requirements.)

Hospice care for residents who choose to live in various types of facilities has come under scrutiny as a result of a variety of findings, including Operation Restore Trust (ORT) activities, Office of Inspector General (OIG) reports from 1997, (U.S. D.H.H.S. OIG, "Hospice and Nursing Home Contractual Relationships," Nov. 1997, OEI–05–95–00251, *http://oig.hhs.gov/oei/reports/oei-05-95-00251.pdf*) and 1998 (OIG Special Fraud Alert, "Fraud and Abuse, Nursing Home Arrangements with Hospices," Mar. 1998 *http://oig.hhs.gov/fraud/docs/alertsandbulletins/hospice.pdf*), and a 2000 report from the Department's Assistant Secretary for Planning and Evaluation (ASPE) Office of Disability, Aging and Long-Term Care Policy and the Urban Institute; "Synthesis and Analysis of Medicare Hospice Benefit Executive Summary and Recommendations." (Harvell, J.; Jackson, B.; Gage, B.; Miller, S.; and Mor, V., Mar. 2000, *http://aspe.hhs.gov/daltcp/reports/2000/samhbes.htm*). In addition, based on feedback to CMS from state surveyors, there is a lack of coordination between LTC facilities and Medicare-certified hospice providers.

We believe there is a lack of clear regulatory direction regarding the responsibilities of providers in caring for LTC facility residents who receive hospice care from a Medicare-certified hospice provider, which could result in duplicative or missing services. We believe this problem would be remedied by a regulatory requirement for a written agreement between the two types of entities when they are both involved in the care of a Medicare beneficiary. A written agreement would help ensure that required services are provided to beneficiaries and protect beneficiary health and safety, which could be endangered by a lack of coordination between hospice and LTC providers. Such an agreement ensures that care is coordinated by specifying what services each provider will provide. For instance, an LTC facility is considered a resident's home. An agreement between the providers would specify that the LTC facility must furnish room and board and meet personal care and nursing needs, while the hospice must provide services that are necessary for the care of the resident's terminal illness, such as counseling and palliation of pain.

A. Statutory Authority

1. Overview

Sections 1819(b)(4)(A)(i) and 1919(b)(4)(A)(i) of the Social Security Act (the Act) state that, to the extent needed to fulfill all plans of care described in sections 1819(b)(2) and 1919(b)(2) of the Act, a skilled nursing facility or nursing facility must provide (or arrange for the provision of) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. The Omnibus Budget Reconciliation Act (OBRA) of 1986 permitted States to add a hospice benefit to their State Medicaid plans. The original legislation (OBRA '86), adding the optional hospice benefit, specified, "hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility" (Pub. L. 99–272, Sec. 9505(a)(2)).

This proposed rule would set forth requirements consistent with requirements in the June 5, 2008 final rule (73 FR 32088) entitled "Medicare and Medicaid Program: Hospice Conditions of Participation." The hospice care final rule set forth new requirements that a Medicare-certified hospice provider must meet when it provides services, including the provision of hospice care to residents of an LTC facility who elect the hospice benefit. Section 418.112(e) specifies what must be included in a written agreement between a Medicare-certified hospice provider and an LTC facility. We propose making the requirements for LTC facilities consistent with the June 2008 final rule. To this end, the language in this proposed rule was crafted to mirror the hospice final rule as much as possible to ensure that both entities are held equally responsible for the written agreement.

This proposed rule would also support current LTC requirements that protect a resident's right to a dignified existence, self-determination, and communication with, and access to, persons and services inside and outside the facility.

2. Rationale for New Requirements

A 2002 Secretary of the Department of Health and Human Services' (DHHS) Advisory Committee Report and a 2003 Hastings Center Report have identified a lack of coordination between LTC facilities and Medicare-certified hospice providers. In 2002, the Secretary of DHHS' Advisory Committee on Regulatory Reform developed recommendations to address key regulatory issues. One of the recommendations of the DHHS Secretary's Advisory Committee report was to clarify the relationship between nursing facilities and hospice providers. The DHHS Secretary's Advisory Committee report stated that there was a need to "reconcile conflicts in regulations and/or guidance that prevent clear delineation as to which entity (LTC facility or the hospice) is required to have the lead in providing required end-of-life care to SNF residents once they elect their hospice benefit." The report recommended revising guidance and procedures to recognize hospice care in the context of the SNF survey protocol. The report further recommended that, if necessary, CMS revise the CoPs for Medicare-certified hospices, SNFs, and NFs to ensure beneficiaries' access to the full range of benefits to which they are statutorily entitled, and to ensure the appropriate entity is accountable for care that should be provided, which is based on a resident's unique needs (*http://regreform.hhs.gov/finalreport.htm*).

An article in the March/April 2003 Hastings Center Report, "Is discontinuity in palliative care a culpable act of omission?" stated, "Hospice patients sign up to obtain palliative care, regardless of the care setting in which they reside. Part of honoring this obligation requires a hospice to attend to the needs of continuity when the site of care does change." The article further stated that, while most non-hospice healthcare providers do not follow their terminally ill patients to other care sites, hospice staff are required by the Medicare CoPs at § 418.56, as well as by industry and accreditation standards, to both provide and oversee palliative care as the patient moves across care sites with which the hospice has a contractual relationship. The article concludes that continuity of care is optimized by care management across care sites. (True Ryndes, Linda Emanuel, The Hastings Center Report, Hastings-on-Hudson: March/April 2003, page S45). (*http://findarticles.com/p/articles/mi_go2103/is_2_33/ai_n7517557/?tag=content;col1*)

This proposed rule, therefore, seeks to clarify the role of the LTC facility and the Medicare-certified hospice by requiring clear delineation of each provider's responsibility for maintaining continuity of care.

The problems LTC facilities and hospices have with the coordination of care, as identified in both the Hastings Center Report and the HHS Secretary's Advisory Committee report, is a direct result of the lack of Medicare requirements specifically related to the provision of contracted hospice care in the current regulatory requirements for LTC facilities. The overall intent of this proposed rule is to promote consistency and continuity of care by requiring that a written agreement between the LTC facility and the Medicare-certified hospice provider clearly identify the responsibilities of each entity when arranging for the provision of hospice services to an LTC resident who elects the hospice benefit. This agreement would be required even if the Medicare-certified hospice and the LTC facility were under common control and/or ownership.

Therefore, in light of the HHS Secretary's Advisory Committee report and Hastings Center Report, and to ensure quality hospice care is provided in a coordinated manner to LTC facility residents who have elected to receive hospice services, we are proposing a new standard at 42 CFR 483.75(r), entitled "Hospice services." At § 483.75(r)(1), we propose that LTC facilities that choose to arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospices, must have a signed agreement with the hospice before any hospice care is provided to any resident. In addition, for those LTC facilities that decline to arrange for the provision of hospice services through an agreement with a Medicare-certified hospice provider, we propose that facilities would be required to assist a resident in transferring to a facility that would arrange for the provision of these services when the resident requested such a transfer.

Requirements for discharge and transfer from LTC facilities are specified at § 483.12. The current regulations do not specifically address a resident's request for transfer. Thus, an LTC facility may accept a written or verbal request for transfer. We propose that all transfers would have to be documented in the resident's medical record.

Under this proposed rule, when hospice care is provided by a Medicare-certified hospice in an LTC facility through an agreement, the LTC facility would be required to meet additional requirements specific to written agreements between the two entities. The LTC facility would be required to ensure that the hospice services met professional standards and principles that apply to individuals providing services in the facility, and to ensure the timeliness of the services. The term, "timeliness of services" means that the LTC facility would be required to ensure that, from the time the resident elected the hospice benefit until the services were terminated, the Medicare-certified hospice would provide hospice services meeting the resident's needs in a timely manner, without any delay in the provision of services for the resident. We anticipate that LTC facilities would address timeliness of services in their agreements with hospices, based on resident needs.

We propose requiring the signatures of both an authorized representative of the hospice and an authorized representative of the LTC facility for such agreements. These provisions would have to be met before any hospice care was furnished to an LTC facility resident who elected the hospice benefit.

The purpose of the written agreement would be to ensure that the duties and responsibilities of the hospice and the LTC facility were clearly described. The signature requirement would prevent misunderstandings that could affect resident care because a responsible person representing each provider would be aware of the respective roles of each entity under the agreement. In addition, the written agreement would ensure that mechanisms were in place to ensure needs of the resident were identified and met, including the need for high quality hospice care.

Under the agreement between the LTC facility and the hospice, the hospice would be responsible for making decisions related to a resident's care for the palliation and management of the terminal illness and related conditions, because § 418.58 requires a hospice to establish and maintain a written plan of care for every individual admitted to its hospice program. The LTC facility would be responsible for making decisions that were not related to a resident's terminal illness, because § 483.20(k) requires a LTC facility to develop a comprehensive care plan for each resident that meets the resident's medical, nursing, mental, and psychosocial needs. Under this proposed rule, the LTC facility would also be responsible for ensuring the hospice provider was informed about changes made to the resident's care plan.

In general, a care plan is a document that provides a "road map" for everyone who is involved with a patient's care. The care planning process includes the interdisciplinary team that will be involved in the care of the patient. The ultimate purpose of a care plan is to guide all involved in the care of the patient in providing the appropriate treatment to ensure an optimal outcome for the patient. A healthcare worker should be able to find all the information needed to care for an individual in that person's care plan.

To encourage the completeness of patient information available to all staff responsible for the care of the patient, we are proposing to require that any written agreements would need to delineate: (1) Which services the Hospice would provide and which services the LTC facility would continue to provide, as delineated in the care plans; (2) how the LTC facility and hospice would communicate to ensure that needs of residents were being addressed and met; and (3) the conditions under which the LTC facility would need to contact the hospice immediately (specifically, this would include significant changes in the resident's physical, mental, social, or emotional status; clinical complications that suggested a need to alter the care plan; a need to transfer the resident from the LTC facility for any condition not related to the terminal condition; or resident death).

As stated above, we are also specifically proposing at § 483.75(r)(2)(ii)(D) that the written agreement identify a specific method of communication between the LTC facility staff and the hospice staff to ensure the effectiveness and timeliness of care. In an emergency, staff could communicate orally, but we would expect facilities to use best practices and document the communication so there could be appropriate follow-up. Best practices are similar to the term "professional standards of quality," which is defined in current guidelines for surveyors in the State Operations Manual (SOM) (*http://www.cms.hhs.gov/manuals/Downloads/som107ap_pp_guidelines_ltcf.pdf*).

The term "best practices" means that services are provided according to recognized standards of clinical practice. Standards may apply to care provided by a particular clinical discipline or in a specific clinical situation or setting. Standards regarding quality care practices may be established by professional organizations, licensing boards, accreditation bodies, and/or regulatory agencies.

In addition to these requirements for the written agreement, we are proposing that the agreement include a provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including changing the level of services provided, if necessary. Among the LTC facility's responsibilities under the written agreement, we are proposing that the agreement include a provision requiring the LTC facility to furnish 24-hour room and board care, meet the resident's personal care and nursing needs in coordination with the hospice representative, and ensure that the level of care provided is appropriate based on the individual resident's needs.

We are proposing that, under the written agreement, there also be a delineation of the hospice's responsibilities, which include, but are not limited to the following: Providing medical direction and management of the patient's hospice care; nursing; counseling (including spiritual, dietary and bereavement); social work; providing medical supplies, durable medical equipment and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions.

For example, the written agreement might state that the hospice would be responsible for determining the correct medication for the terminal condition, but the LTC facility staff would be responsible for the medication's administration, because the LTC facility provides 24-hour care for its residents. Delineating responsibility for these key services would ensure not only continuity of care, but would also guarantee appropriate care in a timely manner. For example, if a resident were in pain and needed medication, it would be vital to the care of the resident to have a clear delineation of each provider's specific responsibilities regarding pain control, including all steps from contacting the prescribing practitioner to obtaining medication, following the procedures set up by the hospice, administering the medication and monitoring its effectiveness.

We propose at § 483.75(r)(2)(ii)(I) that when the LTC facility personnel are responsible for the administration of prescribed therapies, including those therapies determined by the hospice and delineated in the hospice plan of care, the LTC facility personnel may be permitted to administer the therapies where permitted by State law and as specified by the LTC facility.

We propose at § 483.75(r)(2)(ii)(J) that the LTC facility report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by hospice personnel, to the hospice administrator immediately when the LTC facility becomes aware of the alleged violation. This requirement would assure that the hospice is made aware of the alleged violation in a timely manner so that it can begin its own investigation and implement its own intervention(s). We note that under current regulations at § 483.13(c)(3), an LTC facility must immediately provide protection for the resident continuing throughout the investigation. The hospice final rule includes a similar provision at § 418.112(c)(8), which requires reporting of alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by LTC facility personnel to the facility administrator. Such provisions enhance LTC facility-hospice communication and cooperation.

We propose at § 483.75(r)(2)(ii)(K) that the agreement include a delineation of the responsibilities of the hospice to offer bereavement services to LTC facility staff. We propose at § 483.75(r)(3) that each LTC facility that arranges for the provision of hospice care through a written agreement designate a member of the facility's interdisciplinary team to be responsible for working with hospice representatives to coordinate care provided by the LTC facility staff and the hospice staff. In addition, the designated interdisciplinary team member would be responsible for: (1) Collaborating with hospice representatives and coordinating LTC facility staff participation in the hospice care planning process for those residents receiving these services; (2) communicating with hospice representatives and other healthcare providers participating in the provision of care for the terminal illness and related conditions, as well as other conditions, to ensure quality of care for the patient and family; (3) ensuring that the LTC facility communicates with the hospice medical director, the patient's attending physician, and other physicians participating in the provision of care as needed to coordinate the hospice care of the hospice patient with the medical care provided by other physicians; (4) obtaining information from the hospice, including the most recent hospice plan of care specific to each patient, the hospice election form, any advance directives specific to each patient, and physician certification and recertification of the terminal illness specific to each patient, as well as names and contact information for hospice personnel involved in hospice care of each patient; instructions on how to access the hospice's 24-hour on-call system; hospice medication information specific to each patient; and hospice physician and attending physician (if any) orders specific to each patient. In addition, we propose requiring that the LTC facility staff provide orientation to relevant hospice staff about the facility's policies and procedures, including patient rights, appropriate forms, and recordkeeping requirements.

These proposed requirements would apply regardless of the financial and/or ownership relationship between the LTC facility and the hospice.

Although we believe such orientation is critical for the protection of residents receiving hospice care, we understand that it may be difficult for an LTC facility to properly orient other hospice staff who, in unexpected circumstances, may occasionally provide coverage for a member of the identified hospice interdisciplinary group (IDG). Therefore, we welcome public comment on how LTC facilities can provide orientation for hospice staff that is quick and efficient but sufficient to protect residents who receive hospice care.

Our intention is to ensure continuity of care by involving designated representatives from both the LTC facility and the hospice in the hospice care planning and hospice care implementation processes, as well as in LTC facility processes. The LTC facility would have the flexibility to assign one employee from the facility's interdisciplinary team as a coordinator for all hospice residents, or assign a separate coordinator for each hospice resident. The designated coordinator would ensure that the hospice plan of care and the LTC facility plan of care were implemented and updated as appropriate. "Interdisciplinary team" refers to the professionals who work together to provide services to the resident, as defined at § 483.20(k)(2)(ii). Interdisciplinary team members may include physicians, nurses, therapists, social workers, dietitians, and other professionals, such as developmental disabilities specialists. Involvement of other disciplines is dependent upon resident needs.

We propose at § 483.75(r)(4) that each LTC facility that arranges for hospice care under a written agreement with a Medicare-certified hospice ensure that each resident's written plan of care includes both the hospice plan of care and a description of the services furnished by the LTC facility to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, as required at § 483.20(k). We expect that the LTC facility's designated coordinator would work with hospice representatives to meet this requirement.

We believe that including the hospice plan of care (which addresses care for the terminal condition and related conditions) with the LTC facility care plan would improve care coordination and result in better implementation of the overall plan of care. We believe these proposed requirements would facilitate effective communication and coordination between the Medicare-certified hospice provider and the LTC facility, ensuring that quality care would be provided to residents receiving hospice services. We note that these proposed requirements would not limit the scope of the relationship between the Medicare-certified hospice and the facility. Each party could add provisions, subject to mutual agreement, as long as they met or exceeded the proposed requirements.

We anticipate that these proposed requirements, aimed at improving the coordination of care between LTC facilities and Medicare-certified hospice care providers, would lead to improved consistency and quality of care for LTC facility residents who elect to receive hospice services.

In addition, we are taking this opportunity to make a technical correction due to an incorrect citation at § 483.10(n). The language states, "An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 483.20(d)(2)(ii), has determined that this practice is safe." However, § 483.20(d)(2)(ii) does not exist. The correct citation is § 483.20(k)(2)(ii). In § 483.10(n), we are proposing that the reference "§ 483.20(d)(2)(ii)" be revised to read "§ 483.20(k)(2)(ii)."

3. Relevance to Existing Hospice Requirements

Our intent in proposing these requirements for LTC facilities is to ensure they are in accord with our existing requirements at § 418.112 for hospices that provide services to residents of LTC facilities. Our proposed requirements for LTC facilities to have agreements with hospices and to collaborate and communicate with hospices to provide care for LTC facility residents largely parallels the language and intent of the hospice requirements. There are, however, instances where employing the same language would not reflect the distinct roles of each entity or where we believe it is important to provide clarity and detail without disturbing the substance or the proper interpretation of the requirements. In some instances, we are proposing different requirements because we believe they are in the best interests of the residents of LTC facilities. For instance, at proposed § 483.75 (r)(2)(ii)(J), the LTC facility would be required to report all alleged violations by hospice personnel to the hospice administrator immediately when the LTC facility becomes aware of the alleged violation. However, the hospice is required at § 418.112(c)(8) to report these same violations within 24 hours of the hospice becoming aware of the alleged violation.

The rationale for both these rules is to require a written agreement between the hospice and the LTC facility. (See § 418.112(c)(1) through (9) and proposed § 483.75(r)(2)(ii)(A) through (K).) While the rules have slight differences in language, substantively, the requirements are the same. We believe it is appropriate for the remainder of the rule, including the coordination of care requirements at proposed § 483.75(r)(3)(i)(v) and § 418.112(e), to reflect the difference in the roles between the LTC facility and the hospice in providing resident care. Therefore, we are proposing requirements for communication and collaboration specific to the LTC facility that do not mirror the language in the hospice requirements. Rather, the proposed rule for LTC facilities would complement the hospice requirements, and our objective is that, together, these rules will allow for better coordination of care and quality of care for LTC facility residents.

Notwithstanding our analysis that these rules are complimentary and substantively similar, and in view of the slight differences between these rules, we are requesting public comment on whether the differences found in the proposed rule would create a barrier to forming agreements between LTC facilities or interfere in coordination of residents' care between LTC facilities and hospices.

II. Provisions of the Proposed Regulations

As stated above, we are proposing a new standard at 42 CFR 483.75(r), entitled "Hospice services." At § 483.75(r)(1), we propose that LTC facilities may either arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospice providers or not arrange for such services and assist a resident in transferring to a facility that will arrange for the provision of these services when the resident requests such a transfer.

At § 483.75(r)(2)(i) and (ii), we propose specific requirements for LTC facilities choosing to have hospice care provided by a Medicare-certified hospice in their facility. The LTC facility would be required to ensure that the hospice services met professional standards and principles that would apply to individuals providing services in the facility, and the timeliness of the services. We also propose requiring that, before any hospice care was provided to a facility resident, a written agreement would have to be signed by both an individual authorized by the hospice administration and an individual authorized by the LTC facility administration.

In addition, under this section, we are proposing that the written agreement would have to include, at the very least, the following provisions:

• Under § 483.75(r)(2)(ii)(A), the services the hospice will provide;

• Under § 483.75(r)(2)(ii)(B), the hospice's responsibilities for determining the appropriate hospice plan of care as specified in § 418.112(d) of this chapter;

• Under § 483.75(r)(2)(ii)(C), the services the LTC facility will continue to provide, based on each resident's care plan; and

• Under § 483.75(r)(2)(ii)(D), a communication process, including how the communication will be documented between the LTC facility and the hospice provider, to ensure that the needs of the resident are addressed and met 24 hours per day.

Additionally, under § 483.75(r)(2)(ii), we are proposing the inclusion of other duties and responsibilities that must be delineated by the LTC facility and the hospice in their written agreement. Under § 483.75(r)(2)(ii)(E), we are proposing that the agreement contain a provision that the LTC facility must notify the hospice provider immediately regarding—

• A significant change in the resident's physical, mental, social, or emotional status;

• Any clinical complication(s) that would suggest a need to alter the plan of care;

• A condition unrelated to the terminal condition that might require transfer of the resident from the facility; or

• The resident's death.

We propose at § 483.75(r)(2)(ii)(F) that the hospice must assume responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided.

We propose at § 483.75(r)(2)(ii)(G) that the LTC facility must continue to provide 24-hour room and board care, meet the resident's personal care and nursing needs in coordination with the hospice representative, and ensure that the level of care provided is appropriate based on the individual resident's needs.

At § 483.75(r)(2)(ii)(H), we are proposing that the written agreement include a delineation of additional hospice responsibilities, which include, but are not limited to:

• Providing medical direction and management of the patient.

• Nursing.

• Counseling (including spiritual, dietary, and bereavement).

• Social work; providing medical supplies, durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions.

• All other hospice services that are necessary for the care of the resident's terminal illness and related conditions.

We propose at § 483.75(r)(2)(ii)(I) that the agreement include a provision that the hospice may use LTC facility personnel, where permitted by State law and as specified by the LTC facility, to assist in the administration of prescribed therapies included in the hospice plan of care.

We are also specifically proposing, at § 483.75(r)(2)(ii)(J), that the written agreement contain a provision that the LTC facility must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by hospice personnel, to the hospice administrator immediately when the LTC facility becomes aware of the alleged violation. We propose at § 483.75(r)(2)(ii)(K) that the agreement must also include a delineation of the responsibilities of the hospice to offer bereavement services to LTC facility staff.

At § 483.75(r)(3)(i) through (v), we are proposing that the LTC facility that arranges for the provision of hospice care under a written agreement must designate a member of the facility's interdisciplinary team to be responsible for working with hospice representatives to coordinate care provided by the LTC facility and hospice staff to the resident. This individual must be responsible for:

(1) Collaborating with hospice representatives and coordinating LTC facility staff participation in the hospice care planning process for those residents receiving these services;

(2) Communicating with hospice representatives and other healthcare providers participating in the provision of care for the terminal illness, related conditions, and other conditions to ensure quality of care for the patient and family;

(3) Ensuring that the LTC facility communicates with the hospice medical director, the patient's attending physician, and other physicians participating in the provision of care to the patient as needed to coordinate the hospice care of the hospice patient with the medical care provided by other physicians;

(4) Obtaining pertinent information from the hospice (that is, the most recent hospice plan of care specific to each patient; hospice election form and any advance directives specific to each patient; physician certification and recertification of the terminal illness specific to each patient; names and contact information for hospice personnel involved in hospice care of each patient; instructions on how to access the hospice's 24-hour on-call system; hospice medication information specific to each patient; and hospice physician and attending physician (if any) orders specific to each patient); and

(5) Ensuring that the LTC facility staff provide orientation in the policies and procedures of the facility, including patient rights, appropriate forms, and record keeping requirements, to hospice staff furnishing care to LTC residents.

At § 483.75(r)(4), we are proposing that each LTC facility providing hospice care under a written agreement must ensure that each resident's written plan of care includes both the hospice plan of care and a description of the services furnished by the LTC facility to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, as required at § 483.20(k).

As stated in the previous section above, we are also taking this opportunity to make a technical correction due to an incorrect citation at § 483.10(n). In § 483.10(n), we are proposing that the reference "§ 483.20(d)(2)(ii)" be revised to read "§ 483.20(k)(2)(ii)."

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Proposed § 483.75(r)(2)(ii) states that if hospice care is provided in an LTC facility through an agreement with a Medicare-certified hospice, the LTC facility must have a written agreement with the Medicare-certified hospice before care is furnished to any resident.

An LTC facility would be required to have only one written agreement with each hospice that provides services in the facility. This proposed rule would not require an LTC facility to have an individual agreement with a hospice for each resident receiving hospice services. Therefore, the burden associated with this requirement is the time and effort necessary for an LTC facility to develop and finalize one written agreement. Initially, the development of an agreement would require staff time; however, it would also require additional staff time to coordinate the care between the hospice and the LTC facility.

We estimate the number of hours to develop and finalize a written agreement to be approximately 5 hours the first year. The estimated burden associated with the first year is 80,695 hours or $5,512,275. The current requirements at § 483.75(h) "Use of Outside Resources," requires a written agreement when contracting for outside services. Therefore, we would expect that a facility would modify an existing agreement to make it specific to hospice services. Review and revision of an already existing agreement would be expected to take less time thereafter. We estimate that it would take 2 hours to review and revise the agreement annually. The estimated annual burden associated with each successive year after the first is 32,278 hours or $2,204,910. We have based our projections of the hourly cost on the rate for a staff lawyer at $68.31 an hour, which includes fringe benefits (estimated to be 25 percent of the salary). (Source: *Bureau of Labor Statistics, Occupational Employment Statistics Survey.*)

Proposed sections 483.75(r)(2)(ii)(E)(1) through (4) state that the LTC must notify the hospice immediately about—

- A significant change in the resident's physical, mental, social, or emotional status;
- Clinical complications that suggest a need to alter the plan of care;
- A need to transfer the resident from the facility for any condition that is not related to the terminal condition; or
- The resident's death.

The burden associated with these requirements is the time and effort it would take the LTC facility to provide notification to the hospice. We estimate it would take approximately 5 minutes per notification. We anticipate that this would affect 16,139 LTC facilities. If each LTC facility makes 1 notification each month, the burden associated with this requirement is 16,139 annual burden hours and the cost would be $504,344 annually, based on an hourly rate of $31.25 for a blended salary of a registered nurse and licensed practical nurse that includes fringe benefits, since either practitioner could notify the hospice of stated changes. (Source: Bureau of Labor Statistics, Occupational Employment Statistics Survey).

Proposed § 483.75(r)(2)(ii)(J) states that under the agreement, the LTC facility must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by hospice personnel to the hospice administrator immediately when the LTC facility becomes aware of the alleged violation. The burden associated with this requirement is the time and effort it would take the LTC facility to report this information to the hospice administrator. We estimate it would take approximately 10 minutes per incident. We anticipate that this would affect 16,139 LTC facilities. If each LTC facility made one report per month, the burden associated with this requirement would be 32,278 annual burden hours and the cost would be $1,032,895 annually based on an hourly rate of $32 for a registered nurse that includes fringe benefits. (Source: Bureau of Labor Statistics, Occupational Employment Statistics Survey)

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Regulation section(s)	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/maintenance costs ($)	Total cost ($)
§ 483.75(r)(2)(ii)	0938—New	16,139	16,139	5	80,695*	68.31	5,512,275	0	5,512,275
		16,139	16,139	2	**32,278	68.31	2,204,910	0	2,204,910
§ 483.75(r)(2)(ii)(E)(1–4)	0938—New	16,139	193,668	.08333	16,139	31.25	504,344	0	504,344
§ 483.75(r)(2)(ii)(J)	0938—New	16,139	193,668	.16666	32,278	32.00	1,032,895	0	1,032,895
Total		16,139	209,807		161,390				9,254,424

* One time burden estimate for initial development of written agreement.
** Annual burden estimate associated with updating existing written agreements.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Mail copies to the address specified in the **ADDRESSES** section of this proposed rule and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–3140–P.

Fax: (202) 395–6974; or

E-mail: *OIRA_submission@omb.eop.govIV.*

Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not qualify as a major rule, as the estimated economic impact is $7,049,515 the first year and $3,742,150 thereafter.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7.0 million to $34.5 million in any 1 year). For purposes of the RFA, the majority of hospitals, LTC facilities and hospices are considered to be small entities. Individuals and States are not included in the definition of a small entity. A rule has a significant economic impact on the small entities it affects, if it significantly affects their total costs or revenues. Under statute, we are required to assess the compliance burden the regulation will impose on small entities. Generally, we analyze the burden in terms of the impact it will have on entities' costs if these are identifiable or revenues. As a matter of sound analytic methodology, to the extent that data are available, we attempt to stratify entities by major operating characteristics such as size and geographic location. If the average annual impact on small entities is 3 to 5 percent or more, it is to be considered significant. We estimate that these requirements would cost $437 ($7,049,515/16,139 facilities) per facility initially and $232 ($3,742,150/16,139 facilities) thereafter. This clearly is much below 1 percent; therefore, we do not anticipate it to have a significant impact. We do not have any data related to the number of LTC facilities contracting hospice care through an outside hospice provider; however, we are aware through annual surveys that not all LTC facilities arrange for the provision of hospice care.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For the purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule would impact only long-term care facilities. Therefore, the Secretary has determined that this proposed rule would not have any impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This rule would not have a significant impact on the governments mentioned or on private sector costs. The estimated economic effect of this rule is $7,049,515 the first year and $3,742,150 thereafter. These estimates are derived from our analysis of burden associated with these requirements in section III, "Collection of Information Requirements."

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have any effect on State or local governments.

B. Anticipated Effects

1. Effects on LTC Facilities

The purpose of this rule is to ensure the coordination of care for LTC facility residents who elect hospice services. The coordination of care is anticipated to result in better outcomes related to quality of care and quality of life for residents. With appropriate coordination of care as proposed in this rule, we anticipate improved outcomes through more efficient coordination of care between the LTC facility staff and hospice staff, a decrease in duplication of services provided, and improved resident care.

2. Effects on Other Providers

We expect improved consistency in the provision of services to residents receiving hospice care in an LTC facility. We anticipate that primarily only LTC facilities and Medicare-certified hospice providers would be affected, as this proposed rule would be expected to improve coordination of care between LTC facilities and Medicare-certified hospice providers. In instances where a patient is transferred to the hospital for care unrelated to their terminal illness, the hospital should be notified that the patient has elected hospice care.

3. Effects on the Medicare and Medicaid Programs

An Office of the Inspector General (OIG) report released in 1997 found that "contractual arrangements between hospice providers and nursing homes present vulnerabilities for inappropriate use of excessive Medicare and Medicaid payments being made to hospice providers or to nursing homes" (U.S. HHS OIG, Hospice and Nursing Home Contractual Relationships, 1997 Nov., OEI–05–95–00251). We anticipate that the proposed rule would decrease these vulnerabilities, as the services provided by both the LTC facility and the Medicare-certified hospice would be clearly defined.

C. Alternatives Considered

We considered the effects of not addressing specific requirements for the provision of hospice care in LTC facilities. However, we believe that to improve quality and ensure consistency in the provision of hospice services in LTC facilities, it is important to delineate clear responsibilities for Medicare-certified hospice providers and LTC facilities. We expect that these requirements would result in improvement in the quality of care provided to LTC residents receiving hospice services.

D. Conclusion

This proposed rule for a written agreement when arranging for the provision of hospice services in LTC facilities is intended to improve the continuity and quality of care provided to terminally ill LTC facility residents. It is consistent with the Administration's efforts toward broad-based improvements in the quality of health care furnished by Medicare and Medicaid providers.

This proposed rule identifies an LTC facility's choices if a resident elects to receive hospice care. This proposed rule also clarifies the responsibility of the facility that chooses not to arrange for the provision of hospice services at the facility through an agreement with a Medicare-certified hospice. These facilities must assist the resident in transferring to a facility that will arrange for the provision of hospice services when a resident requests a transfer.

This proposed rule would ensure that the duties and responsibilities of a hospice are clearly articulated if the hospice provides care in an LTC facility. Therefore, in order to ensure that quality hospice care is provided to LTC residents we believe it is essential to add these proposed requirements to the LTC regulations.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Chapter IV as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

§ 483.10 [Amended]

2. In § 483.10(n), the reference "§ 483.20(d)(2)(ii)" is revised to read "§ 483.20(k)(2)(ii)."

3. Section 483.75 is amended by adding paragraph (r) to read as follows—

§ 483.75 Administration.

* * * * *

(r) *Hospice services.* (1) A long-term care (LTC) facility may either—

(i) Arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospices; or

(ii) Not arrange for the provision of hospice services at the facility through an agreement with a Medicare-certified hospice and assist the resident in transferring to a facility that will arrange for the provision of hospice services when a resident requests a transfer.

(2) If hospice care is provided in an LTC facility through an agreement as specified in paragraph (r)(1)(i) of this section with a hospice, the LTC facility must:

(i) Ensure that the hospice services meet professional standards and principles that apply to individuals providing services in the facility, and to the timeliness of the services.

(ii) Have a written agreement with the hospice that is signed by an authorized representative of the hospice and an authorized representative of the LTC facility before hospice care is furnished to any resident. The written agreement must set out at least the following:

(A) The services the hospice will provide.

(B) The hospice's responsibilities for determining the appropriate hospice plan of care as specified in § 418.112(d) of this chapter.

(C) The services the LTC facility will continue to provide, based on each resident's care plan.

(D) A communication process, including how the communication will be documented between the LTC facility and the hospice provider, to ensure that the needs of the resident are addressed and met 24 hours per day.

(E) A provision that the LTC facility immediately notifies the hospice regarding—

(*1*) A significant change in the resident's physical, mental, social, or emotional status;

(*2*) Clinical complications that suggest a need to alter the plan of care;

(*3*) A need to transfer the resident from the facility for any condition that is not related to the terminal condition; or

(*4*) The resident's death.

(F) A provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided.

(G) An agreement that it is the LTC facility's responsibility to furnish 24-hour room and board care, meet the resident's personal care and nursing needs in coordination with the hospice representative, and ensure that the level of care provided is appropriate based on the individual resident's needs.

(H) A delineation of the hospice's responsibilities, which include, but are not limited to, providing medical direction and management of the patient; nursing; counseling (including spiritual, dietary, and bereavement); social work; providing medical supplies, durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions.

(I) A provision that when the LTC facility personnel are responsible for the administration of prescribed therapies, including those therapies determined by the hospice and delineated in the hospice plan of care, the LTC facility personnel may administer the therapies where permitted by State law and as specified by the LTC facility.

(J) A provision stating that the LTC facility must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by hospice personnel, to the hospice administrator immediately when the LTC facility becomes aware of the alleged violation.

(K) A delineation of the responsibilities of the hospice and the LTC facility to provide bereavement services to LTC facility staff.

(3) Each LTC facility arranging for the provision of hospice care under a written agreement must designate a member of the facility's interdisciplinary team to be responsible for working with hospice representatives to coordinate care to the resident provided by the LTC facility staff and hospice staff. The designated interdisciplinary team member is responsible for:

(i) Collaborating with hospice representatives and coordinating LTC facility staff participation in the hospice care planning process for those residents receiving these services.

(ii) Communicating with hospice representatives and other healthcare providers participating in the provision of care for the terminal illness, related conditions, and other conditions, to ensure quality of care for the patient and family.

(iii) Ensuring that the LTC facility communicates with the hospice medical director, the patient's attending physician, and other physicians participating in the provision of care to the patient as needed to coordinate the hospice care with the medical care provided by other physicians.

(iv) Obtaining the following information from the hospice:

(A) The most recent hospice plan of care specific to each patient;

(B) Hospice election form and any advance directives specific to each patient;

(C) Physician certification and recertification of the terminal illness specific to each patient;

(D) Names and contact information for hospice personnel involved in hospice care of each patient;

(E) Instructions on how to access the hospice's 24-hour on-call system;

(F) Hospice medication information specific to each patient; and

(G) Hospice physician and attending physician (if any) orders specific to each patient.

(v) Ensuring that the LTC facility staff provide orientation in the policies and procedures of the facility, including patient rights, appropriate forms, and record keeping requirements, to hospice staff furnishing care to LTC residents.

(4) Each LTC facility providing hospice care under a written agreement must ensure that each resident's written plan of care includes both the most recent hospice plan of care and a description of the services furnished by the LTC facility to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, as required at § 483.20(k).

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

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 1, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–26395 Filed 10–21–10; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 75, No. 204

Friday, October 22, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 18, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program Regulations, Part 275—Quality Control

OMB Control Number: 0584–0303

Summary of Collection: Section 16 of the Food and Nutrition Act of 2008, provides the legislative basis for the operation of the Supplemental Nutrition Assistance Program (SNAP) Quality Control system. The Food and Nutrition Service (FNS), as administrator of the SNAP, requires each State agency to implement a quality control system to provide basis for determining each State agency's error rates through review of a sample of SNAP cases. Each State agency is responsible for the design and selection of the quality control samples and must submit a quality control sampling plan for approval to FNS. Additionally, State agencies are required to maintain case records for three years to ensure compliance with provisions of the Food and Nutrition Act of 2008.

Need and Use of the Information: The quality control sampling plan is necessary for FNS to monitor State operations and is essential to the determination of a State agency's error rate and corresponding entitlement to increased Federal share of its administrative costs or liability for sanctions.

Description of Respondents: State, Local, or Tribal Government; Federal Government

Number of Respondents: 53

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 1,363

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–26574 Filed 10–21–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0091]

Notice of Request for Approval of an Information Collection; Importation of Beef From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection associated with regulations for the importation of beef from Uruguay.

DATES: We will consider all comments that we receive on or before December 21, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0091* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0091.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of beef from Uruguay, contact Dr. Lynette Williams-McDuffie, Staff Veterinarian, Technical Trade Services—Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Beef from Uruguay.

OMB Number: 0579–xxxx.

Type of Request: Approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations.

Part 94, § 94.22, allows the importation, subject to certain conditions, of beef from Uruguay. Among the conditions is a requirement for a certificate that must be completed by an authorized official of the Government of Uruguay with a statement that specific conditions have been met to protect the United States against the introduction of foot-and-mouth disease.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.5004034 hours per response.

Respondents: Federal animal health officials of the Government of Uruguay.

Estimated annual number of respondents: 21.

Estimated annual number of responses per respondent: 59.

Estimated annual number of responses: 1,239.

Estimated total annual burden on respondents: 1,859 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 18th day of October 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–26749 Filed 10–21–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0098]

Draft Guidelines on Pharmacovigilance of Veterinary Medicinal Products: Electronic Standards for Transfer of Data

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) has developed a draft guideline titled "Pharmacovigilance of Veterinary Medicinal Products: Electronic Standards for Transfer of Data." This draft guideline provides information concerning the development of a single electronic message to transmit adverse event reports concerning veterinary biologics between regulatory authorities in the European Union, Japan, and the United States and marketing authorization holders (veterinary biologics licensees and permittees) in those regions. Because the draft guideline applies to pharmacovigilance and adverse event reporting on veterinary vaccines regulated by the Animal and Plant Health Inspection Service under the Virus-Serum-Toxin Act, we are requesting comments on the scope of the guideline and its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

DATES: We will consider all comments that we receive on or before December 21, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0098* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0098.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Center for Veterinary Biologics—Policy Evaluation and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) is a unique project conducted under the auspices of the World Organization for Animal Health that brings together the regulatory authorities of the European Union, Japan, and the United States and representatives from the animal health industry in the three regions. The purpose of VICH is to harmonize technical requirements for veterinary products (both drugs and biologics). Regulatory authorities and industry experts from Australia and New Zealand participate in an observer capacity. The World Federation of the Animal Health Industry (COMISA, the Confederation Mondiale de L'Industrie de la Sante Animale) provides the secretarial and administrative support for VICH activities.

The United States Government is represented in VICH by the Food and Drug Administration (FDA) and the Animal and Plant Health Inspection Service (APHIS). The FDA provides expertise on veterinary drugs, while APHIS fills a corresponding role for veterinary biological products. As VICH members, APHIS and FDA participate in efforts to enhance harmonization and have expressed their commitment to seeking scientifically based, harmonized technical requirements for the development of veterinary drugs and biological products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for veterinary drugs and biologics among regulatory agencies in different countries.

The draft guideline "Pharmacovigilance of Veterinary Medicinal Products: Electronic Standards for Transfer of Data" (VICH Topic GL35) has been made available by the VICH Steering Committee for comments by interested parties. The guideline is intended to provide standards to construct a single electronic message to transmit the contents of adverse event reports concerning the use of veterinary medicinal products to all regions. Because the draft guideline applies to some veterinary biological products regulated by APHIS under the Virus-Serum-Toxin Act—particularly with regard to electronic messages to transmit adverse event reports—we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

The draft guideline reflects current APHIS thinking on the use of electronic messages to transmit adverse event reports concerning the use of veterinary medicinal products between marketing authorization holders (licensees/permittees) and regulatory authorities in the three regions. In accordance with the VICH process, once a final draft of each document has been approved, the guideline will be recommended for adoption by the regulatory bodies of the European Union, Japan, and the United States. As with all VICH documents, each final guideline will not create or confer any rights for or on any person and will not operate to bind APHIS or the public. Further, the VICH guidelines specifically provide for the use of alternative approaches if those approaches satisfy applicable regulatory requirements.

Ultimately, APHIS intends to consider the VICH Steering Committee's final guideline for use by U.S. veterinary biologics licensees, permittees, and applicants. In addition, we may consider using the final guideline as the basis for proposed amendments to the regulations in 9 CFR chapter I, subchapter E (Viruses, Serums, Toxins, and Analogous Products; Organisms and Vectors). Because we anticipate that applicable provisions of the final versions of "Pharmacovigilance of Veterinary Medicinal Products: Electronic Standards for Transfer of Data" may be introduced into APHIS' veterinary biologics regulatory program in the future, we encourage your comments on the draft guideline.

The draft guideline may be viewed on the Regulations.gov Web site or in our reading room (*see* **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the draft guideline by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 21 U.S.C. 151 *et seq.*

Done in Washington, DC, this 18th day of October 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–26748 Filed 10–21–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Maryland Electric Cooperative: Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: The Rural Utilities Service (RUS) has issued a Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) associated with the Holland Cliff to Hewitt Road 230 kV Transmission proposal in Calvert and St. Mary's Counties, Maryland. The EA was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) and in accordance with the Council on Environmental Quality's (CEQ's) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508) and RUS's NEPA implementing regulations (7 CFR part 1794, Environmental Policies and Procedures). The purpose of the EA was to evaluate the potential environmental impacts of and alternatives to a Southern Maryland Electric Cooperative (SMECO) application for a RUS loan for the proposal. The proposal includes construction of a 30-mile 230 kilovolt (kV) transmission line, a new 230/69 kV switching station, and a 230/69 kV switching station expansion.

ADDRESSES: To obtain copies of the FONSI or EA, or for further information, contact: Ms. Lauren McGee, Environmental Scientist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Room 2239–S, Washington, DC 20250–1571, telephone: (202) 720–1482, fax: (202) 690–0649, or e-mail: *lauren.mcgee@wdc.usda.gov.* A copy of the FONSI and EA can be viewed online at: *http://www.usda.gov/rus/water/ees/ea.htm.*

SUPPLEMENTARY INFORMATION: SMECO proposes to construct a 230 kV transmission line between the existing Holland Cliff Switching Station in Calvert County to the existing Hewitt Road Switching Station in St. Mary's County, Maryland. The proposal has five segments and includes: (1) The installation of approximately 20 miles of new 230 kV single pole, double-circuit transmission line from the Holland Cliff switching station to a new switching station located in Southern Calvert; (2) the installation of the new Sollers Wharf 230/69 kV switching station; (3) the installation of approximately 8 miles of new 230 kV single pole, double-circuit transmission line from the new Southern Calvert switching station to the existing Hewitt Road switching station; (4) the installation of approximately 2 miles of 230 kV underground transmission cable circuit across the lower Patuxent River; and (5) the expansion of the existing 230 kV ring bus at the Hewitt Road switching station to accommodate the new 230 kV transmission line from Southern Calvert. Throughout the right-of-way, the existing 69 kV poles would be removed, and new 230 kV poles would be installed. The existing 69 kV and new 230 kV lines would be installed on the new poles. This configuration would allow for the use of the existing 69 kV transmission line right-of-way and preclude the need for additional easement acquisition. The preferred site of the new Sollers Wharf switching station is located near the intersection of Sollers Wharf Road and Pardoe Road, west of Maryland Highways 2 and 4 near the Calvert Cliffs tap. Approximately 6 to 10 acres of the 40-acre site would be disturbed during construction. The remainder of the site would serve as a buffer. Construction of the proposal is anticipated for completion in 2015.

A Notice of Intent to prepare an EA and hold a scoping meeting was published in the **Federal Register** on August 27, 2008, in the *Enterprise* (St. Mary's County) on August 29, 2008, and in the *Calvert Recorder* on August 29, 2008. A public meeting was held on September 11, 2008, in SMECO's Calvert Regional Office located at 901 Dares Beach Road, Prince Frederick, Maryland. A scoping summary report can be found at the RUS website listed in this Notice. The notice of availability of the EA for public review was published in the **Federal Register** on September 3, 2010, and in the *Enterprise* and *Calvert Recorder* on September 3 and 9, 2010. The EA was available for public and agency review on the RUS Web site listed in this Notice; at SMECO's Calvert Regional Office located at 901 Dares Beach Road, Prince Frederick, Maryland, and at SMECO's St. Mary's Regional Office located at 23365 Hollywood Road, Leonardtown, Maryland. The 30-day comment period ended on October 3, 2010. No comments were received.

SMECO hired Black and Veatch to prepare an EA for RUS that described the proposal and assessed its potential environmental impacts. RUS conducted an independent evaluation of the EA and concurred with its scope and content. In accordance with RUS's Environmental Policies and Procedures at 7 CFR 1794.41, RUS accepted the document as its official EA.

Based on its EA, RUS has concluded that the proposal would have no significant impacts to water quality, wetlands, the 100-year floodplain, land use, aesthetics, transportation, or human health and safety. The proposal will have no adverse effects on historic properties listed or eligible for listing on the National Register of Historic Places. RUS has also concluded that the proposal is not likely to affect federally listed threatened and endangered species or designated critical habitat. The proposal would not disproportionately affect minority and low-income populations.

No other potential significant impacts resulting from the proposal have been identified. Therefore, RUS has determined that this FONSI fulfills its obligations under NEPA for its action related to the proposal. RUS is satisfied that the environmental impacts of the proposal have been adequately addressed. If RUS takes a federal action on the proposal, it will not result in significant impacts to the quality of the human environment. Accordingly, an Environmental Impact Statement will not be prepared for the proposal.

Dated: October 19, 2010.

James R. Newby,

Chief of Staff, Rural Utilities Service.

[FR Doc. 2010–26747 Filed 10–21–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on November 12, 2011 in Quincy, CA. The purpose of the meeting is to review a timeline for Cycle 11 funding and view presentations about completed Plumas County RAC projects. The funding is made available under Title II provisions of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES AND ADDRESSES: The meeting will take place from 9:30–12 at the Mineral Building—Plumas/Sierra County Fairgrounds, 208 Fairgrounds Road, Quincy, CA.

FOR FURTHER INFORMATION CONTACT: (or for special needs): Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by E-MAIL *eataylor@fs.fed.us.* Other RAC information may be obtained at *http://www.fs.fed.us/srs.*

Dated: October 15, 2010.

Alice B. Carlton,

Forest Supervisor.

[FR Doc. 2010–26559 Filed 10–21–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Uinta-Wasatch-Cache National Forest Resource Advisory Committee will conduct a meeting in Salt Lake City, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to continue the review of project submittals.

DATES: The meeting will be held on October 21, 2010, from 3 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Salt Lake County Government Center, Room N2003, 2001 South State Street, Salt Lake City, Utah. Written comments should be sent to Loyal Clark, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601. Comments may also be sent via e-mail to *lfclark@fs.fed.us,* via facsimile to 801–342–5144.

All comments, including names and addresses when provided, are placed in the record and are available for inspection and copying. The public may inspect comments received at the Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601.

FOR FURTHER INFORMATION CONTACT: Loyal Clark, RAC Coordinator, USDA, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601; 801–342–5117; *lfclark@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Approve administrative costs for the RAC, (2) review and amend approve project submission process, and (3) review project submissions. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: October 6, 2010.

Cheryl Probert,

Acting Forest Supervisor.

[FR Doc. 2010–25821 Filed 10–21–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Sitka Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sitka Resource Advisory Committee will meet in Sitka, Alaska, November 1, 2010. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and

Community Self-Determination Act of 2008.

DATES: The meeting will be held November 1, 2010 at 4 p.m.

ADDRESSES: The meeting will be held at the Sitka Forest Service Office, 204 Siginaka Way, Sitka, Alaska. Send written comments to Sitka Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 204 Siginaka Way, Sitka, AK 99835, or electronically to Lisa Hirsch, RAC Coordinator at *lisahirsch@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lisa Hirsch, RAC Coordinator Sitka Ranger District, Tongass National Forest, (907) 747–4214.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 12, 2010.

Carol A. Goularte,

District Ranger.

[FR Doc. 2010–26406 Filed 10–21–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Superior Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Superior Resource Advisory Committee will meet in Duluth, Minnesota. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review and make decisions on proposals requesting funds from Title II of the Secure Rural School Act. The schedule for soliciting the next round of proposals will be set.

DATES: The meeting will be held on Thursday, November 4, 2010, 9 a.m.

ADDRESSES: The meeting will be held at the EPA office, 6201 Congdon Blvd, Duluth, MN 55804. Written comments should be sent to Superior National Forest, RAC, 8901 Grand Ave Place, Duluth, MN 55808. Comments may also be sent via e-mail to *Lradosevichcraig@fs.fed.us,* or via facsimile to 218–626–4312.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Superior National Forest Headquarters. This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Lisa Radosevich-Craig, Partnership Coordinator & Tribal Liaison, Superior National Forest Headquarters, 218–626–4336, *Lradosevichcraig@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review of Secure Rural Schools Title II Rules and Operational Guidelines; Review and Selection of Proposals; Process and Timeline for Next Round of Request for Proposals; and a Public Forum, The agenda and any applicable documents may be previewed at *http://www.fs.fed.us/R9/superior.* Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by Monday, November 1, 2010 will have the opportunity to address the Committee at those sessions.

Dated: October 13, 2010.

Mark Hummel,

Deputy Forest Supervisor, Acting Forest Supervisor, Superior National Forest, Duluth, Minnesota.

[FR Doc. 2010–26439 Filed 10–21–10; 8:45 am]

BILLING CODE 3410–DT–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13.

Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *Ross_A._Rutledge@omb.eop.gov* or fax to 202–395–3086. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–New.

Form Number: AID 321–3.

Title: Mentor Protégé Program—Post-Agreement Report.

Type of Submission: New Information Collection.

Purpose: The required annual reports will be used to determine if the mentor-protégé agreement is meeting its milestones outlined in the original agreement package. and the effect of the mentoring on the protégé.

Annual Reporting Burden:

Respondents: 30.

Total annual responses: 30.

Total annual hours requested: 360 hours.

Dated: October 8, 2010.

Beth Salamanca,

Acting Director, Office of Management Services, Bureau for Management.

[FR Doc. 2010–26410 Filed 10–21–10; 8:45 am]

BILLING CODE M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13.

Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *Ross_A._Rutledge@omb.eop.gov* or fax to 202–395–3086. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–New.

Form Number: AID 321–2.

Title: Mentor Protégé Program—Annual Report.

Type of Submission: New Information Collection.

Purpose: The mentors are required to report on the progress made under each active Mentor-Protégé Agreement annually throughout the term of the agreement. Each report is due 30 days after the end of each twelve-month period commencing with the start of the agreement.

Annual Reporting Burden:

Respondents: 30.

Total annual responses: 30.

Total annual hours requested: 360 hours.

Dated: October 8, 2010.

Beth Salamanca,

Acting Director, Office of Management Services, Bureau for Management.

[FR Doc. 2010–26412 Filed 10–21–10; 8:45 am]

BILLING CODE M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13.

Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification, Comments should be sent via e-mail to *Ross_A._Rutledge@omb.eop.gov* or fax to 202–395–3086. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–New.

Form Number: AID 321–1.

Title: Mentor Protégé Program—Agreement Application.

Type of Submission: New information collection.

Purpose: Entities interested in participating in the U.S. Agency for International Developments (USAID) Mentor-Protégé Program must apply in writing to the USAID Office of Small and Disadvantaged Business Utilization (OSDBU) by submitting the application form. The application will contain the Mentor-Protégé Program Agreement and will be evaluated for approval. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint venture, and traditional subcontracting support. USAID's current policy on the Mentor-Protégé Program can be found in the AIDAR 719.273.

Annual Reporting Burden:

Respondents: 30.

Total annual responses: 30.

Total annual hours requested: 360 hours.

Dated: October 8, 2010.

Beth Salamanca,

Acting Director, Office of Management Services, Bureau for Management.

[FR Doc. 2010–26413 Filed 10–21–10; 8:45 am]

BILLING CODE 6116–01–M

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

Time And Date: 10 a.m.–12:30 p.m., November 5, 2010.

Place: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

Status: The meeting will be open to the public.

Matters To Be Considered

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2009–2010; (2) Review the Low-Level Radioactive Waste (LLRW) Disposal and Storage information for 2009; (3) Consider a proposed budget for fiscal year 20011–2012; (4) Review policy and technical issues regarding LLRW management and disposal; and (5) Elect the Commission's Officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be announced at the meeting.

Contact Person for More Information: Rich Janati, Administrator of the Commission, at 717–787–2163.

Rich Janati,

Administrator, Appalachian Compact Commission.

[FR Doc. 2010–26572 Filed 10–21–10; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: BroadbandMatch Web Site Tool.

OMB Control Number: 0660–0033.

Form Number: None.

Type of Request: Regular Submission (Extension of a currently approved information collection).

Number of Respondents: 4,500.

Average Time per Response: 15 minutes.

Burden Hours: 1,125.

Needs and Uses: The Department of Commerce's National Telecommunications and Information Administration (NTIA) and the Department of Agriculture's Rural Utility Service (RUS) are administering an initiative of the American Recovery and Reinvestment Act (Recovery Act) to expand access to and adoption of broadband services. NTIA is utilizing that funding for its Broadband Technology Opportunities Program (BTOP), to support broadband infrastructure deployment, enhanced and expanded public computer centers, and projects encouraging sustainable adoption of broadband service. To help potential applicants to BTOP and the RUS' Broadband Initiatives Program (BIP), the agencies developed BroadbandMatch during the second funding round as an online tool for applicants to identify prospective partners with needed expertise and resources to strengthen their BTOP and BIP proposals.

The long-term success and sustainability of these projects require wide stakeholder support and coordination. Therefore, NTIA will continue BroadbandMatch as an ongoing resource for communities pursuing broadband projects and programs to advance the Presidential goal of universal, affordable broadband access for all Americans. The information collected through BroadbandMatch will facilitate collaboration among interested stakeholders. The online tool is also a useful means for businesses, non-profits, and state and local governments, and others to find potential partners to support their broadband initiatives, including alternative funding sources for projects that did not receive Recovery Act awards and additional resources for those projects that did.

Further, BroadbandMatch will complement other Administration efforts to promote ubiquitous broadband deployment and adoption in the United States. Significantly, the Recovery Act obligates NTIA to release publicly by February 17, 2011 a National Broadband Map developed from data collected and verified through grants from NTIA's State Broadband Data and Development grant program. The interactive national map will help educate consumers and businesses about broadband availability, enable broadband providers and investors to make better-informed decisions regarding the use of their private capital, and allow federal, state, and local policy-makers to make more data-driven decisions on behalf of their constituents. BroadbandMatch can help community residents and leaders identify interested partners to improve broadband availability and adoption in their localities.

Affected Public: Individuals or households; business and other for-profit organizations; not-for-profit institutions; and state or local government entities.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Frazer, (202) 395–5887.

Copies of the above information collection proposal are available by contacting Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, Fax number (202) 395–7285 or at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: October 18, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–26564 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ93

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a sector separation workshop.

DATES: The meeting will convene at 12 p.m. on Monday, November 8, 2010 and conclude by 12 p.m. on Wednesday, November 10, 2010.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 5303 West Kennedy Blvd, Tampa, FL 33609, telephone: (813) 287–1050.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The workshop will serve as a platform to exchange information and discuss issues relative to sector separation and allocation such as the legal framework for making allocation decisions; constituent perceptions; and potential benefits and challenges of dividing the recreational sector into two sectors—a for-hire sector and a private recreational sector.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the workshop agenda may come for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. During the workshop, actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 19, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26700 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ94

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Habitat and Environmental Protection (Habitat) Advisory Panel in North Charleston, SC.

DATES: The meeting will take place November 16–17, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Charleston Marriott Hotel, 170 Lockwood Blvd., Charleston, SC 29403; telephone: (866) 357–6667.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Members of the Habitat Advisory Panel will meet from 9 a.m.–5 p.m. on November 16, 2010, and from 9 a.m. until 1 p.m. on November 17, 2010.

Issues to be addressed at the meeting include but are not limited to: The draft Comprehensive Ecosystem Based Amendment 2, a five-year Essential Fish Habitat review, the Governor's South Atlantic Alliance Action Plan, a status report on Gulf oil spill activities, habitat assessments conducted through the National Habitat Plan, regional ocean observing activities through Southeast Coastal and Ocean Observing Regional Association (SECOORA), regional fishery independent research overview, the establishment of a South Atlantic Landscape Conservation Cooperative (SALCC), and developing Regional GIS services for habitat, regulation and fishery research.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (*see* **FOR FURTHER INFORMATION CONTACT**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 19, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26701 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ77

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of Availability; request for comments.

SUMMARY: NMFS announces the availability of the Proposed Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead (Plan) for public review and comment. The Plan describes the recovery strategies and actions needed to recover the Upper Willamette River Chinook (*Oncorhynchus tschawytscha*) Evolutionarily Significant Unit (ESU) and Upper Willamette River steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS) to viable levels and addresses the human and natural factors that originally led to the threatened listing of these species under the Endangered Species Act (ESA). NMFS is soliciting review and comment from the public and all interested parties on the proposed Plan.

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific standard time on December 21, 2010.

ADDRESSES: Please send written comments and materials to Lance Kruzic, National Marine Fisheries Service, 2900 NW Stewart Parkway, Roseburg, OR 97471. Comments may also be submitted by e-mail to: *willamette.plan@noaa.gov.* Please include "Comments on Upper Willamette Recovery Plan" in the subject line of the e-mail. Comments may be submitted via facsimile (fax) to (541) 957–3386. Persons wishing to review the Plan can obtain an electronic copy (*i.e.,* CD ROM) from Sharon Houghton by calling (503) 230–5418 or by e-mailing a request to *sharon.houghton@noaa.gov* with the subject line "CD ROM Request for Upper Willamette Recovery Plan." Electronic copies of the Plan are also available on line on the NMFS Web site, *http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Willamette-Lower-Columbia/Will/Will-Plan.cfm.*

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, NMFS' Willamette Recovery Coordinator, at (541) 957–3381, or Rob Walton, NMFS' Protected Resources Division at (503) 231–2285.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). Section 4(f)(1) of the ESA requires that recovery plans incorporate: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the Plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

NMFS is responsible for developing and implementing ESA recovery plans for listed salmon and steelhead. In so doing, NMFS' goal is to restore endangered and threatened Pacific salmonids to the point that they are again self-sustaining members of their ecosystems and no longer need the protections of the ESA. Local support of recovery plans by those whose activities directly affect the listed species, and whose actions will be most affected by recovery efforts, is essential. NMFS therefore supports and participates in locally led collaborative efforts to develop recovery plans that involve local communities, State, tribal, and Federal entities, and other stakeholders.

In the Upper Willamette River Basin, the Oregon Department of Fish and Wildlife (ODFW) has been the local entity leading the development of the recovery plan for ESA-listed Upper Willamette spring Chinook and winter steelhead. After many years of developing the Plan, with a suite of local stakeholders (including local, county, State, and Federal agencies; private industry; fishing organizations; and environmental groups), the ODFW has formally submitted the Plan to NMFS. After review and evaluation, NMFS has determined the Plan meets the statutory requirements for a recovery plan and thus now is proposing to adopt the Plan as the ESA recovery plan for listed Upper Willamette spring Chinook and winter steelhead. The state of Oregon also has a requirement to develop "conservation plans" for native fish in Oregon under their Native Fish Conservation Policy (*http://ftp.dfw.state.or.us/fish/nfcp/nfcp.pdf*). The state is also proposing this Plan for adoption under its policy. Thus, when adopted, this Plan will serve as a conservation and recovery plan for the state of Oregon and NMFS.

Proposed Recovery Plan for Upper Willamette Salmon and Steelhead

Below is a summary of the key components of the proposed Plan described separately for Upper Willamette River spring Chinook and winter steelhead. The intent of the summary is to provide the reader an overview of the current status of the species, the problems that have led to the current status, and the recovery strategies and actions proposed in the Plan to recover the species to the desired status. See the **ADDRESSES** section above to obtain a full copy of the proposed Plan.

Upper Willamette River Spring Chinook

The Upper Willamette River spring Chinook ESU was listed by NMFS as threatened in 1999 (64 FR 14308). The ESU includes all naturally spawned populations of spring Chinook in the Clackamas River and in the Willamette Basin upstream of Willamette Falls. The ESU also includes hatchery spring Chinook from five hatcheries: McKenzie River Hatchery, Marion Forks Hatchery, South Santiam Hatchery, Willamette Hatchery, and Clackamas hatchery (70 FR 37160).

Myers *et al.* (2006) identified seven demographically independent populations of spring Chinook in the Upper Willamette River based on geography, migration rates, genetic attributes, life history patterns, phenotypic characteristics, population dynamics, and environmental and habitat characteristics. The seven populations include the Clackamas, Molalla, North Santiam, South Santiam, Calapooia, McKenzie, and the Middle Fork Willamette. Myers et al. (2006) concluded that the Clackamas, North Santiam, McKenzie and Middle Fork Willamette populations are "core populations" and the McKenzie is a "genetic legacy" population.

Current Status and Listing Factors

There are four Viable Salmonid Population (VSP) parameters NMFS uses to assess the status of salmon and steelhead under the ESA: abundance, productivity, spatial structure, and diversity (McElhany *et al.,* 2000). NMFS considers the Upper Willamette spring Chinook ESU to be at a high risk of extinction due to significant alterations in all of the VSP parameters (McElhany *et al.,* 2007). NMFS is currently conducting a review of the status of all listed species, and will take into account the fact that the Upper Willamette spring Chinook ESU is currently considered to be at high risk of extinction. Of the seven historic populations, only two populations (McKenzie and Clackamas) currently produce significant returns of naturally-produced fish and are deemed to currently be at moderate to low risk. All of the other five populations have exhibited very low returns of naturally-produced spring Chinook salmon and are currently at a high risk of extinction.

NMFS evaluates five listing factors (threats) under section 4(a)(1) when making initial determinations are made whether to list species for protection under the ESA. They include: Present or threatened destruction, modification, or curtailment of [the species'] habitat or range (Factor A); over-utilization for commercial, recreational, scientific, or educational purposes (Factor B); disease or predation (Factor C); inadequacy of existing regulatory mechanisms (Factor D); and other natural or human-made factors affecting [the species'] continued existence (Factor E). At the time of the original listing determination in 1999 (64 FR 14308), NMFS cited all of the five listing factors as contributing to the decline of Upper Willamette spring Chinook salmon. Specifically, the major concerns described were related to: loss of historic spawning and rearing habitat due to dam blockages in the eastside tributaries of the Willamette River; adverse thermal effects downstream from operation of the dams; riparian and stream habitat loss and degradation particularly in the lowland, valley areas (Factors A and D); excessive fishery harvest (Factor B); and adverse effects from hatchery programs (Factor E).

Objective and Measurable Criteria

The ultimate goal of the Plan is to recover spring Chinook populations in the Willamette River and correct the factors that have contributed to their decline to a point where ESA protection is no longer necessary. In determining whether the protections of the Act are no longer necessary, NMFS evaluates (1) the biological status of the ESU or DPS and its constituent populations (viability) and (2) the status of the threats that led to the listing of the species under the ESA as well as any additional threats that have emerged. Thus in formulating a plan for recovery, we include two types of criteria which, when met, will indicate that the listed species no longer requires the protections of the Act—viability criteria and threats criteria. These criteria satisfy the requirements of ESA section 4(f)(1)(B)(ii) and are further described below.

The Willamette/Lower Columbia Technical Recovery Team (Technical Recovery Team) provided information on the historic population structure (Myers et al. 2006) and criteria for ESU/DPS viability (McElhany *et al.* 2007). The populations are identified in Table 1. The viability criteria for spring Chinook and steelhead are as follows:

1. ESU/DPS is viable when:

(a) At least two populations in the ESU and DPS meet Population Viability Criteria (see 2 below).

(b) The average of all population extinction risk category scores with the ESU or DPS is 2.25 or greater (*see* 2 below).

(c) Most of "core" populations (*i.e.,* the populations that were most productive historically: 3 of 4 core Chinook populations and 2 of 2 core steelhead populations) within the ESU/DPS are restored to viability.

(d) The ESU/DPS maintains a semblance of normative evolutionary processes by improving to very low risk of extinction the remaining "genetic legacy" populations (Chinook: McKenzie population, steelhead: Santiam populations), and

(e) All populations not meeting Population Viability Criteria below shall not deteriorate and are maintained (at a minimum) at their current risk status.

2. Population Viability: A population is "viable" based on an integrated assessment of the population's abundance, productivity, spatial structure, and diversity status that produces an extinction risk of 5% or less over a 100 year timeframe. The Technical Recovery Team's scoring system is based on a scale from 0–4, with zero being very high risk of extinction (>40% probability of extinction over 100 years) and four being a very low risk of extinction (1% or less probability of extinction over 100 years).

For the Upper Willamette River spring Chinook ESU to achieve viability, the Plan proposes to recover the Upper Willamette ESU and its constituent populations to the risk levels identified in Table 1.

TABLE 1—UPPER WILLAMETTE SPRING CHINOOK ESU POPULATION RECOVERY SCENARIO

Spring Chinook population	TRT designation	Current risk status	Proposed risk status
Clackamas	Core	Moderate risk	Very low risk.
Molalla		Very high risk	High risk.
North Santiam	Core	High risk	Low risk.
South Santiam		High risk	Moderate risk.
Calapooia		Very high risk	High risk.
McKenzie	Core, Legacy	Low risk	Very low risk.
MF Willamette	Core	Very high risk	Low risk.
Overall ESU Risk (extinction risk score)		High risk (0.71)	Moderate to Low risk (2.57).

In addition to achieving biological viability, the threats to the ESU must also be sufficiently ameliorated so that once the ESU is delisted, there are adequate protections in place to ensure the species is not likely to become listed under the ESA again in the foreseeable future. The five listing factors must be addressed in order for the species to recover to biological viability. Thus, the Plan emphasizes meeting the biological viability criteria by addressing the threats that led to the decline and are currently preventing the species from recovering. The threats criteria are as follows. For further details, see the Plan.

A. Present or Threatened Destruction, Modification, or Curtailment of ESU/DPS' Habitat or Range

1. Habitat related threats have been ameliorated such that they do not limit attainment of the desired status of the ESU/DPS and its constituent populations. The desired status of each population is defined by viability criteria in the Plan.

a. The condition of stream and riparian habitat in freshwater and the estuary has improved since the time of listing.

2. Hydropower/flood control dam related threats have been ameliorated

such that they do not and will not limit attainment of the desired status of the ESU/DPS and its constituent populations.

a. Management actions have been implemented since the time of listing to reintroduce salmon and steelhead back into historic habitats above the impassable dams.

b. Survival of outplanted adult fish above the impassable dams to spawning is high.

c. Downstream passage survival of juvenile offspring through the reservoir and dam complexes is high.

d. Management of flow and temperature downstream of the federal dams is sufficient to allow adequate spawning and rearing of salmon and steelhead.

B. Over-Utilization for Commercial, Recreational, Scientific, or Educational Purposes

1. Harvest related threats have been ameliorated such that they do not, and will not, limit attainment of the desired status of the ESU/DPS and its constituent populations.

a. Management actions have been implemented since the time of listing to reduce fishery exploitation rates so that fishery harvest is no longer impeding the recovery potential of the populations and ESU/DPS.

b. Exploitation rates are in accordance with ESA authorizations for ocean and freshwater fisheries.

C. Disease or Predation

1. Disease and predation related threats have been ameliorated such that they do not, and will not, limit attainment of the desired status of the ESU/DPS and its constituent populations.

a. Management actions have been implemented since the time of listing to reduce disease transmission and predation by non-native species in the Willamette Basin.

b. Management actions have been implemented since the time of listing to reduce predation from marine mammals.

c. Management actions have been implemented since the time of listing to reduce disease transmission and predation by hatchery-origin fish in the Willamette Basin and estuary.

D. Inadequacy of Existing Regulatory Mechanisms

1. Inadequacies of existing regulatory mechanisms have been addressed such that the species' biological and habitat requirements are being met to allow attainment of the desired status of populations.

2. Adequate resources, priorities, regulatory frameworks, and coordination mechanisms are established and/or maintained for effective enforcement of land and water use regulations that protect and restore habitats, including water quality and water quantity, and for the effective management of fisheries.

3. Habitat conditions and watershed functions are protected through land-use planning that guides human population growth and development.

4. Habitat conditions and watershed function are protected through regulations that govern resource extraction such as timber harvest and gravel mining.

5. Habitat conditions and watershed functions are protected through land protection agreements as appropriate, where existing policy or regulations do not provide adequate protection.

6. Sufficient priority instream water rights for fish habitat are in place.

E. Other Natural or Human-Made Factors Affecting the ESU/DPS Continued Existence

1. Other natural factors have been accounted for such that they do not limit attainment of the desired status of populations.

2. Hatchery related threats have been ameliorated such that they do not, and will not, limit attainment of the desired status of populations.

a. Management actions have been implemented to reduce genetic and ecological risks of naturally-spawning hatchery fish in the wild.

The Plan describes the threats criteria in more detail and includes the monitoring and evaluation plans in Chapter 8. NMFS concludes that the viability criteria and the threats criteria, as specified in the Plan, define the conditions that, when met, would result in a determination that the Upper Willamette spring Chinook ESU is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range. These conditions represent the best available science at this time. However, they may not necessarily be the only conditions that could result in a decision to delist.

Site-Specific Management Actions

The strategies and actions identified in the Plan related to the recovery scenario for spring Chinook are designed to reduce human and natural impacts associated with the threats facing each population. The Plan also includes the analysis and assumptions used to determine that the identified actions would likely improve the populations to the desired risk status levels identified in Table 1. The key strategies and site-specific management actions are fully described in Chapters 7 and 9 of the Plan. In general, they include:

- Reduce the adverse effects associated with Willamette hydropower and flood control operations by restoring access to historic production areas upstream of the dams, reducing downstream passage mortality of juvenile Chinook through the reservoirs and dams, and restoring more natural flows, temperatures and sediment regimes.
- Protect habitat quantity and quality within the remaining Chinook salmon production areas in all of the populations, and restore instream and riparian habitats. This entails improving water quality and quantity in stream reaches where impaired, restoring riparian habitat to keep streams cool and provide large woody debris, and managing land use by applying best management practices for fishery enhancement.
- In the Calapooia, allow the subbasin to be naturally re-seeded with Chinook strays from other adjacent populations as habitat conditions improve.
- In the Molalla, rebuild Chinook production by improving the habitat for adult and juvenile life stages and then supplementing with fish from a conservation hatchery program for a limited period of time.
- Restore habitat complexity in the mainstem Willamette River to improve juvenile salmonid rearing capacity and survival by restoring riparian function and condition, reconnecting side channels and floodplains to the mainstem river, and restoring water quality to aid salmonid survival particularly through the summer months.
- Protect and restore estuarine habitat complexity (shallow waters, side channels, cover vegetation and structures, riparian areas, wetlands), habitat accessibility (tide gates, other structures) and water quality/quantity to maintain and improve survival of all life stages of salmon and steelhead.
- Reduce the adverse effects of hatchery Chinook programs on the recovery of wild populations by reducing hatchery fish spawning in the wild consistent with recovery goals, promoting locally adapted, naturally reproducing runs above the impassable dams from reintroductions, and adaptively managing the hatchery programs in response to on-going monitoring.
- Continue to implement ODFW's Willamette Chinook Fisheries Management and Evaluation Plan

(FMEP) to assure fishery harvest risks are managed appropriately and do not inhibit the recovery potential of any population.

Upper Willamette River Steelhead

"Steelhead" is the name commonly applied to the anadromous (migratory) form of the biological species *Oncorhynchus mykiss.* The common name of the non-anadromous, or resident, form is rainbow trout. When NMFS originally listed the Upper Willamette River steelhead as threatened in 1999 (64 FR 14517), it was classified as an ESU of salmonids that included both the anadromous and resident forms. Recently, NMFS revised its species determinations for West Coast steelhead under the ESA, delineating anadromous, steelhead-only "distinct population segments" (DPS). NMFS listed the Upper Willamette River steelhead DPS as threatened on January 5, 2006 (71 FR 834). Rainbow trout are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). This recovery plan addresses steelhead and not rainbow trout, consistent with the 2006 ESA listing decision.

The Upper Willamette River steelhead DPS includes all naturally spawned winter-run steelhead populations in the Willamette River and its tributaries upstream from Willamette Falls to the Calapooia River (inclusive). It does not include steelhead residing in the McKenzie and Middle Fork Willamette. The Technical Recovery Team identified four historical demographically independent populations of Upper Willamette River winter steelhead: the Molalla, North Santiam, South Santiam, and Calapooia (Myers *et al.,* 2006). These population delineations were based on geography, migration rates, genetic attributes, life history patterns, phenotypic characteristics, population dynamics, and environmental and habitat characteristics with guidance found in McElhany *et al.* (2000). The North Santiam and South Santiam rivers are thought to have been major production areas and these populations were designated as "core" and "genetic legacy" (Myers *et al.,* 2006). Winter steelhead have been reported spawning in the west-side tributaries to the Willamette River, but these tributaries were not considered to have constituted an independent population historically. There are no hatchery programs producing steelhead within the geographic boundaries of the DPS. The hatchery summer-run steelhead in the Upper Willamette Basin are an out-of-basin stock (originally from Skamania Hatchery) and not considered part of the DPS.

Current Status and Listing Factors

Based upon status assessments in McElhany *et al.* (2007) and the Plan, the Upper Willamette steelhead DPS is currently at a moderate to low risk of extinction. However, there is uncertainty in the assessment due to the limited population-specific data. The only direct measure of abundance comes from counts at Willamette Falls, which also include winter steelhead returning to areas outside of the DPS (i.e., upstream of the Calapooia River). The counts at Willamette Falls have declined over the last five years compared to the relatively large returns in 2001 through 2004. The most recent five year average is similar to the abundance levels observed in the 1990's, which are much reduced from the previous decades. The Molalla, North Santiam, and South Santiam populations are currently at low risk (McElhany et al. 2007). The Calapooia population is currently at a moderate risk of extinction (McElhany et al. 2007).

As described above for Chinook salmon, we evaluate five listing factors under section 4(a)(1) when determining whether to list species under the ESA. At the time of the original listing determination in 1999 (64 FR 14517), NMFS cited all of the five listing factors as contributing to the decline of Upper Willamette steelhead. Specifically, the major concerns described were related to: loss of historic spawning and rearing habitat due to dam blockages in the eastside tributaries of the Willamette River, adverse thermal effects downstream from operation of the dams, riparian and stream habitat loss and degradation particularly in the lowland, valley areas (Factors A and D); lack of historical abundance data for steelhead populations, management on non-federal lands (Factor D); and adverse effects from hatchery programs (Factor E).

Objective and Measurable Criteria

The ultimate goal of the Plan is to recover spring Chinook populations in the Willamette River and correct the factors that have contributed to their decline to a point where ESA protection is no longer necessary. In determining whether the protections of the Act are no longer necessary, NMFS evaluates (1) the biological status of the ESU or DPS and its constituent populations (viability) and (2) the status of the threats that led to the listing of the species under the ESA as well as any additional threats that have emerged (threats). Thus in formulating a plan for recovery, we include two types of criteria which, when met, will indicate that the listed species no longer requires the protections of the Act—viability criteria and threats criteria. These criteria satisfy the requirements of ESA section 4(f)((1)(B)(ii) and are further described below.

The Technical Recovery Team provided information on the historic population structure (Myers et al. 2006) and criteria for ESU/DPS viability (McElhany et al. 2007). The steelhead populations are identified in Table 2. The biological viability criteria for steelhead are the same criteria as stated above for spring Chinook.

For the Upper Willamette River steelhead DPS to meet viability criteria, the Plan proposes to recover the Upper Willamette DPS and its constituent populations to the risk levels identified in Table 2. In addition to achieving biological viability, the five listing factors that originally led to the listing of the DPS must also be sufficiently ameliorated so that once the DPS is delisted, there are adequate protections in place to ensure the species is not likely to become listed under the ESA again in the foreseeable future. The threats must be addressed in order for the species to recover to viability. Thus, the Plan emphasizes meeting the viability criteria by addressing the threats that are responsible for the species decline. The threats criteria for winter steelhead are the same as specified above for Chinook.

TABLE 2—UPPER WILLAMETTE STEELHEAD DPS POPULATION RECOVERY SCENARIO

Steelhead population	TRT designation	Current risk status	Proposed risk status
Molalla		Low risk	Very low risk.
North Santiam	Core, genetic legacy	Low risk	Very low risk.
South Santiam	Core, genetic legacy	Low risk	Very low risk.
Calapooia		Moderate risk	Moderate risk.

TABLE 2—UPPER WILLAMETTE STEELHEAD DPS POPULATION RECOVERY SCENARIO—Continued

Steelhead population	TRT designation	Current risk status	Proposed risk status
DPS Risk (extinction risk score)		Moderate risk (2.75)	Low to very low risk (3.50).

NMFS concludes that the viability criteria and the threats criteria as specified in the Plan define the conditions that, when met, would result in a determination that the Upper Willamette steelhead DPS is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range. These conditions represent the best available science at this time. However, they may not necessarily be the only conditions that could result in a decision to delist.

Site-Specific Management Actions

The strategies and actions identified in the Plan for winter steelhead are designed to reduce human and natural impacts associated with the primary and secondary limiting factors and threats facing each population. If the primary and secondary limiting factors and threats are ameliorated, then the population should be conserved and recover over time. The Plan also includes the analysis and assumptions used to determine that the identified actions would likely improve the populations to the desired risk status levels identified in Table 2. The proposed key strategies and site-specific management actions are fully described in Chapters 7 and 9 of the Plan. In general, they include:

• Protect and restore freshwater habitat in the tributary areas of the Willamette River for steelhead production. Actions focus on providing adequate spawning and rearing habitat in all of the population areas. Improvements to riparian areas to provide cooler temperatures throughout the summer, provide sources of large woody debris for instream habitat complexity, and keep sufficient water in the stream for juvenile steelhead rearing are critical to recovering steelhead populations. These actions will also provide substantial benefits to listed Chinook.

• Improve water quantity and quality by reducing the impacts of water withdrawals.

• Protect and restore estuarine habitat complexity (shallow waters, side channels, cover vegetation and structures, riparian areas, wetlands), habitat accessibility (tide gates, other structures) and water quality/quantity.

• Address direct impacts of Willamette hydropower and flood control dam/reservoir operations by restoring access to historic production areas, reducing passage mortality, and restoring more natural flows, temperatures and sediment levels.

• Reduce predation and related impacts of birds and fish in the estuary.

• Manage fisheries and hatchery programs adaptively so their impacts on wild steelhead populations are compatible with recovery goals.

Time Required and Cost Estimates for Spring Chinook and Steelhead Recovery

There are unique challenges to estimating time and cost for salmon and steelhead recovery, given the complex relationship of these fish to the environment and to human activities on land. NMFS estimates that recovery of the Upper Willamette River Chinook ESU and steelhead DPS, like recovery for most of the ESA-listed Pacific Northwest salmon and steelhead, could take 50 to 100 years. The Plan is a 25-year plan. Actions identified in the Plan will be implemented within this timeframe, though most of the actions are scheduled to be completed earlier than this. NMFS and ODFW estimated costs associated with implementing new actions or increasing programs resulting from this recovery plan were included, but did not consider other costs, referred to as "baseline" costs, which are part of an entities base program or mission, or which are required by regulatory processes (*e.g.,* ESA section 7 consultations, Clean Water Act implementation actions, state fishery management).

The Plan estimates the total cost for restoring the Upper Willamette Chinook ESU and steelhead DPS at $265 million over the next 25 years (using the assumptions stated above), but cautions that this number could represent a minimal cost for recovery, given all of the costs and uncertainties which are not included in the Plan. Such uncertainties include biological and ecosystem responses to recovery actions, as well as long-term and future funding. At this time, the amount of acreage or miles of habitat that need to be improved is unknown, so quantity and total costs for some actions remain to be determined. Uncertainty of the survival effect of many of the habitat actions also makes estimation of the full extent of habitat action costs difficult. The Plan calls for greater quantification and understanding of the amount of habitat restoration needed.

Conclusion

Section 4(f)(1)(B) of the ESA requires that recovery plans incorporate: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the Plan's goals; and (3) estimates of the time required and costs to implement recovery actions. As summarized above (and fully described in the Plan), the three requirements for a recovery plan have been fulfilled in this Plan, and thus NMFS is proposing to adopt it under section 4(f)(1) of the ESA for Upper Willamette Chinook and Upper Willamette steelhead.

Public Comments Solicited

NMFS is soliciting written comments on the proposed Plan. All comments received by the date specified above will be considered prior to NMFS' decision whether to approve the Plan. Additionally, NMFS will provide a summary of the comments and responses through its Northwest Region Web site and provide a news release for the public announcing the availability of the response to comments. NMFS is seeking comment particularly in the following areas: (1) If the population recovery scenarios identified in Table 1 and Table 2 are appropriate; (2) if the suite of proposed actions in the Plan are appropriate to recover the ESU and DPS; (3) if the viability and threats criteria for removing the ESU and DPS from the Federal list of endangered and threatened wildlife and plants are appropriate and, in particular, if the threats criteria are sufficiently specific; and (4) if the estimates of time and cost to implement recovery actions are appropriate.

Literature Cited

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Authority: 16 U.S.C. 1531 *et seq.*

McElhany, P., M. Chilcote, J. Myers, R. Beamesderfer. 2007. Viability status of Oregon salmon and steelhead populations in the Willamette and Lower

Columbia Basins, review draft. National Marine Fisheries Service Northwest Fisheries Science Center, Seattle, WA.

Myers, J., C. Busack, D. Rawding, A. Marshall, D. Teel, D.M. Van Doornik, and M.T. Maher. 2006. Historical population structure of pacific salmonids in the Willamette River and Lower Columbia River Basins. NOAA Technical Memorandum NMFS–NWFSC–73, February, 2006. Seattle, WA.

National Marine Fisheries Service (NMFS). 2008. Endangered Species Act—Section 7(a)(2) Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation. Consultation on the "Willamette River Basin Flood Control Project." NMFS, Hydropower Division. Portland, OR.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 19, 2010.

Therese Conant,

Acting Chief Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–26754 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1710]

Reorganization of Foreign-Trade Zone 38 Under Alternative Site Framework Spartanburg County, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170,01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, submitted an application to the Board (FTZ Docket 37–20 10, filed 5/19/2010) for authority to reorganize under the ASF with a service area of the South Carolina counties of Greenville, Spartanburg, Cherokee, Oconee, Union, Anderson and Laurens, in and adjacent to the Greenville/Spartanburg Customs and Border Protection port of entry, FTZ 38's existing Sites 2, 3, 4, 6, 9, 10, and 11 as well as new Site 13 would be categorized as magnet sites, and the grantee proposes three initial usage-driven sites (Sites 1, 5 and 7);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 30372, 6/1/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 38 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 3, 4, 6, 9, 10, 11 and 13 if not activated by October 31, 2015, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 1, 5 and 7 if no foreign-status merchandise is admitted for a bona fide customs purpose by October 31, 2013.

Signed at Washington, DC, this 7th day of October 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–26282 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Advisory Committee on Commercial Remote Sensing (ACCRES); Request for Nominations

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice requesting nominations for the Advisory Committee on Commercial Remote Sensing (ACCRES).

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) was established to advise the Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, on matters relating to the U.S. commercial remote sensing industry and NOAA's activities to carry out responsibilities of the Department of Commerce as set forth in the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5621–5625). The Committee is comprised of leaders in the commercial space-based remote sensing industry, space-based remote sensing data users, government (Federal, State, local), and academia. The Department of Commerce is seeking highly qualified individuals who are knowledgeable about the commercial space-based remote sensing industry and uses of space-based remote sensing data to serve on the Committee.

DATES: Nominations must be postmarked no later than 30 days from the publication date of this notice.

SUPPLEMENTARY INFORMATION: ACCRES was established by the Secretary of Commerce on May 21, 2002, to advise the Secretary, through the Under Secretary of Commerce for Oceans and Atmosphere, on matters relating to the U.S. commercial remote sensing industry and NOAA's activities to carry out responsibilities of the Department of Commerce as set forth in the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5621–5625).

Committee members serve in a representative capacity for a term of two years and may serve additional terms, if reappointed. No more than 15 individuals at a time may serve on the Committee. ACCRES will have a fairly balanced membership consisting of approximately 9 to 15 members. Nominations are encouraged from all interested U.S. persons and organizations representing interests affected by the Land Remote Sensing Policy Act of 1992 and the U.S. commercial space based remote sensing policy. Nominees must possess demonstrable expertise in a field related to the spaced based commercial remote sensing industry or exploitation of space based commercial remotely sensed data and be able to attend committee meetings that are held usually two times per year. In addition, selected candidates must apply for and obtain a security clearance. Membership is voluntary, and service is without pay.

Each nomination that is submitted should include the proposed committee member's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: the nominee's name, address, phone number, fax number, and e-mail address, if available.

Nominations should be sent to Director, Commercial Remote Sensing Regulatory Affairs Office, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910. Nominations must be postmarked no later than 30 days from the publication date of this notice. The full text of the Committee Charter and its current membership can be viewed at the Agency's Web page at *http://www.accres.noaa.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: ACCRES Administration, NOAA Commercial Remote Sensing Regulatory Affairs Office, 1335 East West Highway, Room 8119, Silver Spring, Maryland 20910; telephone (301) 713–1644, e-mail *CRSRA@noaa.gov.*

Jane D'Aguanno,

Director, Commercial Remote Sensing, Regulatory Affairs.

[FR Doc. 2010–26746 Filed 10–21–10; 8:45 am]

BILLING CODE 3510–HR–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities and to delete products previously furnished by such agency.

COMMENTS MUST BE RECEIVED ON OR BEFORE: 11/22/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.
2. If approved, the action will result in authorizing small entities to provide the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Grounds Maintenance Service, 5298 Redstone Arsenal, Redstone Arsenal, AL.
NPA: Huntsville Rehabilitation Foundation, Huntsville, AL.
Contracting Activity: Dept Of The Army, XR W6BB ACA Redstone Arsenal, Redstone Arsenal, AL.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Flashlight, Aluminum

NSN: 6230–01–513–3267—3D, Black.
NSN: 6230–01–513–3284—4D, Black.
NSN: 6230–01–513–3286—5D, Black.
NPA: Central Association for the Blind & Visually Impaired, Utica, NY.
Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2010–26707 Filed 10–21–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, October 27, 2010; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 19, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–26913 Filed 10–20–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences

AGENCY: Department of Education, Institute of Education Sciences.

ACTION: Notice of an open meeting with a closed session.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences. The notice also describes the functions of the Committee. Notice of this meeting is

required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the open portion of the meeting. The public is being given less than 15 days' notice due to the need to accommodate the members' schedules.

DATES: November 1, 2010

TIMES: Open session: 8:30 a.m. to 4 p.m. The meeting will be closed from 4 p.m. to 4:45 p.m. for the election of a Chair and Vice Chair.

ADDRESSES: 80 F Street, NW., Room 100, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Designated Federal Official, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 602 I, Washington, DC 20208; phone: (202) 219–2253; fax: (202) 219–1466; e-mail: *Mary.Grace.Lucier@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002(ESRAa0, 20 U.S.C 9516. The Board advises the Director of the Institute of Education Sciences (IES) on, among other things, the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

At this time, the Board consists of ten of fifteen appointed members due to the expirations of the terms of former members. The Board shall meet and can carry out official business because the ESRA states that a majority of the voting members serving at the time of a meeting constitutes a quorum.

On November 1, 2010, starting at 8:30 a.m. the Board will approve the agenda and hear remarks from the chair, followed by further remarks from John Easton, IES director. The Board is expected to consider and approve priorities proposed by the director to guide the work of the Institute. A break will take place from 9:45 a.m. to 10 a.m. A presentation on the Privacy Technical Assistance Center will take place from 10 a.m. to 11 a.m., followed by an overview of the proposed agenda for the Regional Educational Laboratories program.

The meeting will break for lunch from 12 noon to 1:15 p.m., following which there will be a presentation and discussion of state of the art approaches to research implementation. A discussion of recently released IES reports will be held from 2:30 p.m. until 4 p.m. The meeting will close to the public from 4 p.m. to 4:45 p.m. for the election of Chair and Vice Chair. The new officers will have a brief opportunity to address the membership about their vision for the Board's role for the next two years, and adjournment is expected at 5 p.m.

A final agenda will be available from Mary Grace Lucier (*see* contact information above) on October 25 and will be posted on the Board Web site *http://ies.ed.gov/director/board/agendas/index.asp.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistance listening devices, or materials in alternative format) should notify Mary Grace Lucier no later than October 20. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 602 K, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may 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/fed-register/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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: October 19, 2010.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2010–26782 Filed 10–21–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Federal Loan Guarantee To Support Construction of the Topaz Solar Farm, San Luis Obispo County, CA

AGENCY: Loan Guarantee Program, Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement and conduct a public scoping meeting and notice of proposed floodplain action.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations, and the DOE NEPA implementing procedures, to assess the potential environmental impacts of its proposed action of issuing a Federal loan guarantee to Topaz Solar Farms, LLC (Topaz) (DOE/EIS–0458). Topaz submitted an application to DOE under the Federal loan guarantee program pursuant to the Energy Policy Act of 2005 (EPAct 2005) to support construction of the Topaz Solar Farm Project located in San Luis Obispo County, California (the Project).

Topaz is a limited liability company that is owned by First Solar, Inc. Topaz proposes to develop the Project on approximately 4,000 acres of land. As proposed, the approximately 550-megawatt electric generation project would include the installation of about nine million photovoltaic (PV) solar modules within approximately 437 arrays and associated electric equipment. At full capacity, the Project would generate enough electricity to power an estimated 160,000 California homes annually. Generated electricity would be sold to Pacific Gas and Electric (PG&E) under a long-term power purchase agreement. The Project would be interconnected into PG&E's existing Morro Bay-Midway 230-kilovolt (kV) transmission line, which runs in an east-to-west direction through the site.

The EIS will evaluate the potential environmental impacts of the issuance of a DOE Loan Guarantee for Topaz's proposed Project and the range of reasonable alternatives. The purposes of this Notice of Intent are to inform the public about DOE's proposed action; invite public participation in the EIS process; announce plans for a public scoping meeting; and solicit public comments for consideration in establishing the scope and content of

the EIS. DOE is hereby providing notice of a proposed action in a floodplain and that DOE will include a floodplain assessment in the EIS. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

DATES: The public scoping period will begin with publication of this Notice of Intent and end on November 22, 2010. To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be postmarked or e-mailed by November 22, 2010 to ensure consideration. Late comments will be considered to the extent practicable.

ADDRESSES: Public comments can be submitted electronically or by U.S. Mail. Written comments on the proposed EIS scope should be signed and addressed to the NEPA Document Manager for this project: Ms. Angela Colamaria, Loan Guarantee Program (LP–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Electronic submission of comments is encouraged due to processing time required for regular mail. Comments can be submitted electronically by sending an e-mail to: *Topaz-EIS@hq.doe.gov.* All electronic and written comments should reference DOE/EIS–0458.

In addition to receiving written comments, DOE will conduct a public scoping meeting in the vicinity of the proposed Project at which government agencies, private-sector organizations, and the general public are invited to provide comments or suggestions with regard to the alternatives and potential impacts to be considered in the EIS. The date, time, and location of the public scoping meeting will be announced in local news media and on the DOE Loan Guarantee Program's "NEPA Public Involvement" Web site (*http://lpo.energy.gov/?page_id=1502*) and the DOE NEPA Web site "Public Participation" Calendar (*http://nepa.energy.gov/calendar.htm*) at least 15 days prior to the date of the meeting.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this EIS, the public scoping meeting, or to receive a copy of the draft EIS when it is issued, contact Angela Colamaria by telephone: 202–287–5387; toll-free number: 800–832–0885 ext. 75387; or electronic mail: *Angela.Colamaria@hq.doe.gov.* 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; facsimile: 202–586–7031; electronic mail: *askNEPA@hq.doe.gov;* or leave a toll-free message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Title XVII of EPAct 2005 established a Federal loan guarantee program for eligible energy projects, and was amended by the American Recovery and Reinvestment Act of 2009, (the Recovery Act) to create Section 1705 of Title XVII (42 U.S.C. 16516), authorizing a new program for rapid deployment of renewable energy projects and related manufacturing facilities, electric power transmission projects, and leading edge biofuels projects. The primary purposes of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization. The Section 1705 Program is designed to address the current economic conditions of the nation, in part, through financing renewable energy, transmission and leading edge biofuels projects.

On March 29, 2010, the Royal Bank of Scotland plc, as Lender-Applicant, with Topaz as the borrower, submitted the first part (Part I) of a two-part application to DOE for a Federal loan guarantee under the Solicitation entitled, "Federal Loan Guarantees for Commercial Technology Renewable Energy Generation Projects under the Financial Institution Partnership Program" (Solicitation No. DE–FOA–0000166), issued on October 7, 2009. Topaz submitted Part II of its application on August 10, 2010.

Purpose and Need for Agency Action

The purpose and need for action by DOE is to comply with its mandate under EPAct 2005 by selecting eligible projects that meet the goals of the Act, as summarized above. The EIS will inform DOE's decision on whether to issue a loan guarantee to Topaz to support the proposed Project.

Proposed Action

DOE's proposed action is to issue a loan guarantee to Topaz to support construction of the Topaz Solar Farm. The Project would be located in an unincorporated portion of eastern San Luis Obispo County, California, adjacent to Highway 58 and east of Bitterwater Road. Topaz has options to purchase approximately 10,000 acres of land in the Project area. The Project would be developed on approximately 4,000 to 4,100 acres of land within one of two overlapping study areas:

Study Area A, the southernmost study area, includes approximately 8,000 acres. If the Project is located within Study Area A, the fenced area would be approximately 4,100 acres.

Study Area B, the northernmost study area, includes approximately 6,300 acres. If the Project is located within Study Area B, the fenced area would be approximately 4,000 acres.

The study areas are larger than what would be needed to develop the project in order to allow flexibility in the final project design. The proposed Project would consist of: A solar field of ground-mounted PV modules that collect solar radiation to produce electricity; an electrical collection system that converts generated power from direct current (DC) to alternating current (AC) and delivers it to the Project substation; the aforementioned Project substation that collects and converts the generated power from 34.5 kV to 230 kV for delivery via a new PG&E switching station to PG&E's existing Morro Bay-Midway 230–kV transmission line; and the aforementioned PG&E switching station that interconnects the Project to PG&E's existing transmission line. After construction, PG&E would own and operate the switching station.

The Project's solar field would consist of 437 solar arrays. Each solar array would generate 1.3 megawatts alternating current of power and would consist of up to 20,000 PV modules and one power conversion station. Each power conversion station would consist of two inverters in an air-conditioned enclosure and one adjacent transformer. Each array would cover approximately seven acres of land.

Eight to twelve miles of overhead 34.5–kV high-capacity collection system lines, with two to four circuits each, would connect the power output from each of the solar arrays to the on-site Project substation. Wooden poles approximately 43 feet high would support these overhead lines.

The Project substation would collect the output and transform it from 34.5 kV to 230 kV. The substation would occupy approximately 4.5 acres and would be adjacent to the PG&E switching station, where the 230–kV output of the substation would be connected and delivered to the Morro Bay-Midway 230–kV transmission line.

The new PG&E switching station would be adjacent to the existing PG&E Morro Bay-Midway 230–kV transmission line. The Morro Bay-Midway 230–kV transmission line traverses the Project site just south of the PG&E switching station. Two new 100- to 125-foot-high double-circuit lattice steel transmission towers and four steel poles would be installed to accommodate the looping of PG&E's 230–kV line into the switching station. The towers and poles would be within or adjacent to the existing PG&E transmission line right-of-way as well as located on either side of the new PG&E switching station to position the transmission conductors for proper ingress and egress to the station. Construction of the interconnection between the existing Morro Bay–Midway 230–kV line and the new PG&E switching station would be undertaken by PG&E.

Topaz has interconnection agreements in place for the first 400 MW of Project capacity. The California Independent System Operator has determined that network upgrades would be required to accommodate the Project's remaining 150 MW, as well as other generation projects in the region. Network upgrades could include the reconductoring of the 230–kV transmission lines between the new PG&E switching station and the Midway Substation.

As part of the proposed Project, Topaz would construct and operate a solar energy learning center within the Project's site boundary. Topaz would work with local educators to develop exhibits, tours, and educational programs for the center that would complement existing science and sustainability curricula. The center would be able to accommodate several class field trips per day, as well as 100 to 200 visitors per month. The center would be a 30-foot-by-30-foot enclosed building, compliant with the Americans with Disabilities Act, with restrooms, a scale model of the solar facilities, and exhibits on solar power.

Alternatives

In determining the range of reasonable alternatives to be considered in the EIS for the proposed Project, DOE identified the reasonable alternatives that would satisfy the underlying purpose and need for agency action. DOE currently plans to analyze in detail the Project proposed by Topaz and the No Action alternative. Topaz's site selection criteria for the Project included environmental sensitivity, topography, electrical grid system integration, high solar production potential, and disturbed land availability. Topaz determined that the Project area met these criteria because it has a strong solar resource, is adjacent to a transmission line with available capacity, contains relatively flat terrain and consists of previously disturbed, available land. Within the Project area, Topaz identified two Study Areas (Study Area A and Study Area B) that would be suitable for the Project, although construction of the Project would take place on only one Study Area if the Project is approved. DOE will analyze both Study Areas (Study Area A and Study Area B) available to Topaz as options, within the scope of the Project and mitigation measures as appropriate.

Under the No Action alternative, DOE would not provide the loan guarantee to Topaz. In this case, Topaz may have greater difficulty obtaining financing for the Project, which may result in a delay in the start of construction, construction in smaller phases over a longer time period, potentially increased project cost, or could possibly result in the Project not being built. Although Topaz may still pursue the Project without the loan guarantee, as defined above, for purposes of this NEPA analysis, it is assumed that the No Action alternative would include a no Project or no build scenario.

Notice of Proposed Floodplain Action

DOE is hereby providing notice of a proposed DOE action in a floodplain pursuant to DOE Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022). Overhead electrical lines would need to cross 100-year floodplains (unnamed drainages within the Carrizo Plain, northwest of Soda Lake). Since some of the floodplains on the project site are greater than 200 feet wide and posts are needed every 200 feet to support overhead lines, the installation of some posts within the floodplain is anticipated. DOE will prepare a floodplain assessment as required by DOE regulations. The floodplain assessment will be included as part of the EIS that DOE is preparing for this project. Interested parties may comment during the scoping period following the publication of this NOI and will also be able to comment on the floodplain assessment when the Draft EIS is published.

Preliminary Identification of Environmental Issues

DOE has tentatively identified the following environmental resource areas for consideration in the EIS. This list is neither intended to be all-inclusive nor a predetermined set of potential environmental impacts:

Air quality.
Greenhouse gas emissions and climate change.
Energy use and production.
Water resources, including groundwater and surface waters.
Wetlands and floodplains.
Geological resources.
Ecological resources, including species of special concern and threatened and endangered species such as the San Joaquin kit fox, longhorn fairy shrimp and vernal pool fairy shrimp.
Cultural resources, including historic structures and properties; sites of religious and cultural significance to Tribes; and archaeological resources.
Land use.
Visual resources and aesthetics.
Transportation and traffic.
Noise and vibration.
Hazardous materials and solid waste management.
Human health and safety.
Accidents and terrorism.
Socioeconomics, including impacts to community services.
Environmental justice.
Cumulative impacts.

DOE invites comments on whether other resource areas or potential issues should be considered in the EIS.

Public Scoping Process

To ensure that all issues related to DOE's proposed action are addressed, DOE seeks public input to define the scope of the EIS. The public scoping period will begin with publication of this Notice of Intent and end on November 22, 2010. Interested government agencies, private-sector organizations, and the general public are encouraged to submit comments 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 to assist DOE in identifying significant issues for analysis. Comments must be postmarked or e-mailed by November 22, 2010 to ensure consideration. (*See* **ADDRESSES** above). Late comments will be considered to the extent practicable. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies in the preparation of this EIS.

A public scoping meeting will be held during the scoping period, at a date, time, and location to be determined. Notice of this meeting will be provided in local news media and on the DOE Loan Guarantee Program's "NEPA Public Involvement" Web site (*http://loanprograms.energy.gov/?page_id=337*) and the DOE's NEPA Web site "Public Participation" Calendar (*http://nepa.energy.gov/calendar.htm*) at least 15 days prior to the date of the meeting. Members of the public and representatives of groups and Federal, State, local, and Tribal agencies are invited to attend. The meeting will include both a formal opportunity to present oral comments and an informal session during which DOE and Topaz personnel will be available for discussions with attendees. Displays and other forms of information about the proposed agency action, the EIS process, and Topaz's proposed Project will also be available for review. DOE requests that anyone who wishes to present oral comments at the meeting contact Ms. Colamaria by phone or e-mail (*see* **ADDRESSES** above). Individuals who do not make advance arrangements to speak may register at the meeting. Speakers who need more than five minutes should indicate the length of time desired in their request. DOE may need to limit speakers to five minutes initially, but will provide additional opportunities as time permits. Written comments regarding the scoping process can also be submitted to DOE officials at the scoping meeting.

The DOE will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Because the Topaz project site is expected to impact waters subject to the jurisdiction of the U.S. Army Corps of Engineers, the project will require a Section 404 Permit. In addition, because the proposed Topaz project may affect listed species under the Endangered Species Act (ESA), DOE will also initiate consultation regarding the project with the U.S. Department of the Interior's Fish and Wildlife Service under Section 7 of the ESA. DOE will also invite Federally-recognized American Indian Tribes that have historic interests in the area to government-to-government consultation regarding the project. Government-to-government consultation will be offered to Indian Tribes, and Tribal concerns, including impacts on Indian trust assets, will be given appropriate consideration. Federal, State, and local governments—along with other stakeholders who may be interested or affected by the DOE's decision on this Project—are invited to participate in the scoping process and, if eligible, may request or be requested by the DOE to participate as a cooperating agency.

Issued in Washington, DC, on October 18, 2010.

Jonathan M. Silver,

Executive Director, Loan Programs Office.

[FR Doc. 2010–26712 Filed 10–21–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). The Act requires that agencies publish these notices in the **Federal Register**. The Charter of the Commission can be found at: *http://www.OilSpillCommission.gov.*

DATES: November 8, 2010, 9 a.m.–5 p.m., and November 9, 2010, 9 a.m.–5:30 p.m.

ADDRESSES: Grand Hyatt Washington, 1000 H St., NW., Washington, DC 20001; telephone number: 1–202–582–1234.

FOR FURTHER INFORMATION CONTACT: Christopher A. Smith, Designated Federal Officer, Mail Stop: FE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–0716 or facsimile (202) 586–6221; e-mail: *BPDeepwaterHorizonCommission@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to examine the relevant facts and circumstances concerning the root cause of the BP Deepwater Horizon explosion, fire, and oil spill and to develop options to guard against, and mitigate the impact of, any oil spills associated with offshore drilling in the future.

The Commission is composed of seven members appointed by the President to serve as special Government employees. The members were selected because of their extensive scientific, legal, engineering, and environmental expertise, and their knowledge of issues pertaining to the oil and gas industry. Information on the Commission can be found at its Web site: *http://www.OilSpillCommission.gov.*

Purpose of the Meeting: Inform the Commission about the progress of the Chief Counsel's investigation into the Macondo well blowout. The Commission will hear a presentation from the Chief Counsel and statements from industry and academic experts. The Commission will also have the opportunity to hear from representatives of companies involved in the events leading to the blowout.

Tentative Agenda: The meeting is expected to start on November 8, 2010 at 9 a.m. Presentations to the Commission are expected to begin shortly thereafter and will conclude at approximately 5 p.m. The meeting will continue on November 9, 2010 at 9 a.m. with presentations to the Commission. Public comments can be made on November 9, 2010 from 5 p.m. to 5:30 p.m. The final agenda will be available at the Commission's Web site: *http://www.OilSpillCommission.gov.*

Public Participation: The meeting is open to the public, with capacity and seats available on a first-come, first-serve basis. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Approximately one-half hour will be reserved for public comments on the second day of the hearing. Time allotted per speaker will be three minutes. Opportunity for public comment will be available on November 9, 2010 tentatively from 5 p.m. to 5:30 p.m. Registration for those wishing to request an opportunity to speak opens onsite on November 9, 2010 at 8 a.m. Speakers will register to speak on a first-come, first-serve basis. Members of the public wishing to provide oral comments are encouraged to provide a written copy of their comments for collection at the time of onsite registration.

Those not able to attend the meeting may view the meeting live on the Commission Web site: *http://www.OilSpillCommission.gov.* Those individuals who are not able to attend the meeting, or who are not able to provide oral comments during the meeting, are invited to send a written statement to Christopher A. Smith, Mail Stop FE–30, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or e-mail: *BPDeepwaterHorizonCommission@hq.doe.gov.*

Minutes: The minutes of the meeting will be available at the Commission's Web site: *http://www.OilSpillCommission.gov* or by contacting Mr. Smith. He may be reached at the postal or e-mail addresses above.

Accommodation for the hearing impaired: A sign language interpreter will be onsite for the duration of the meeting.

Issued in Washington DC, on October 19, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–26710 Filed 10–21–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 10, 2010, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentations
- Frenchman Flat Peer Review
- Mixed Waste
- Fundamentals of Radiation

Public Participation: The EM SSAB, Nevada Test Site, 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 Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on October 14, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–26449 Filed 10–21–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–1–000]

Pine Prairie Energy Center, LLC; Notice of Application

October 15, 2010.

Take notice that on October 4, 2010, Pine Prairie Energy Center, LLC (Pine Prairie), 333 Clay Street, Suite 1500, Houston, TX 77002 filed an application in Docket No. CP11–1–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate its Phase III Expansion Project. Pine Prairie's Phase III Expansion Project would expand upon its existing storage facilities located in Evangeline Parish, Louisiana. Specifically, Pine Prairie would: (i) Construct two additional natural gas storage caverns, each having a working gas capacity of 12.0 billion cubic feet (Bcf), bringing the total number of caverns at the facility to seven; (ii) increase the working gas capacity of four of the five authorized natural gas storage caverns from 10 Bcf to 12 Bcf; (iii) restate the total capacity of Cavern No. 1 as being 10.2 Bcf to reflect an increase in the quantity of base gas to be maintained in that cavern from 1.6 Bcf to 2.2 Bcf; (iv) construct extensions of the existing storage facility piping in order to connect the proposed caverns to Pine Prairie's existing systems; (v) construct approximately 2.50 miles of 24, 20, and 16-inch diameter leaching pipeline looping and related enhancements; (vi) install two incremental electric drive compressor units totaling 11,500 horsepower; and (vii) increase the authorized maximum daily receipt and delivery capacities at interconnections with two interstate pipelines from 600 MMcf/day to 900 MMcf/day, all as described in more detail in the application which is on file with the Commission and open for public inspection.

Pine Prairie states that the Phase III Expansion Project will increase the Pine Prairie Energy Center's total working gas capacity to 80 Bcf, supported by base gas capacity of 22.6 Bcf (for a total storage capacity of 102.6 Bcf). Pine Prairie also requests a reaffirmation of the previously granted authorization to charge market-based rates for its storage and hub services.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659. Any questions concerning this Application may be directed to James F. Bowe, Jr., Dewey & LeBoeuf LLP, 1101 New York Avenue, NW., Washington, DC 20005, 202–346–8000 (phone) 202–346–8102 (fax), *jbowe@dl.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 5, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26687 Filed 10–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13815–000]

Renew Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 15, 2010.

On July 13, 2010, Renew Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Boonton Reservoir Dam and Conduit Project, located on the Rockaway River, in Parsippany-Troy Hills, New Jersey. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of two developments, the Boonton Reservoir Dam Development and the Boonton Conduit Development, as described below.

The Boonton Reservoir Dam Development would consist of the following: (1) The Jersey City Municipal Utilities Authority's existing 115-foot-high, 2,150-foot-long concrete gravity dam, with 500-foot-long earth embankments on each abutment; (2) a 30-foot-high, 3,200-foot-long existing Parsippany Dike; (3) the existing Boonton reservoir with an 825-acre surface area and a 28,200 acre-foot storage area at a normal surface elevation of 307 feet mean sea level; (4) an existing masonry intake structure with trash rakes; (5) two existing 48-inch-diameter pipes; (6) a new powerhouse containing two generating units with a combined capacity of 1,800 kilowatts (kW); (7) two new 4-foot-wide, 15-foot-long tailrace pipes; (8) a 200-foot-long, 12.42/7.2-kilovolt (kV) transmission line from the powerhouse to an existing valve house; (9) a 1,000-foot-long, 12.42/7.2-kV transmission line from the powerhouse to the Township of Boonton's Waste Treatment Plant's control room; and (10) a 400-foot-long, 12.42/7.2-kV transmission line from the valve house to a pumping station. The proposed Boonton Reservoir Dam Development would have an average annual generation of 7.19 gigawatt-hours.

The Boonton Conduit Development would consist of the following: (1) An existing 9-foot-diameter, 0.5-mile-long, aqueduct from Boonton Reservoir Dam to the Jersey City Water Treatment Plant; (2) two 48-inch-diameter modified conduits; (3) an existing valve house converted to a new powerhouse containing two generating units with a total capacity of 500 kW; (4) a 300-foot-long, 12.42/7.2-kV transmission line. The proposed Boonton Conduit Development would have an average annual generation of 2.14 gigawatt-hours.

The proposed developments would have a total combined average annual generation of 9.33 gigawatt-hours.

Applicant Contact: Paul V. Nolan, Esquire, 5515 North 17th Street, Arlington, VA, 22205; phone: (703) 534–5509.

FERC Contact: Timothy Konnert, (202) 502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13815–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26689 Filed 10–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13831–000]

Vortex Hydro Energy, LLC; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Interventions

October 15, 2010.

On August 9, 2010, Vortex Hydro Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the St. Clair Hydrokinetic Project, located on the St. Clair River, in St. Clair County, Michigan. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Two medium scale VIVACE converters with each unit consisting of approximately nine cylinders that is gravity held at the bottom of the river bed; (2) an underwater inverter that would convert the electric signal to 3 Phase 480 Volts; and (3) a proposed underwater cable that would transmit to the nearby Dunn Paper Plant. The proposed St. Clair Hydrokinetic Project would have an estimated average annual generation of 0.788 gigawatt-hours.

Applicant Contact: Gus Simiao, CEO, Vortex Hydro Energy, LLC, 2512 Carpenter Road, Suite 201–A1, Ann Arbor, MI 48108; phone: (734) 971–4020.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

Competing Applications: This application competes with Project No. 13694–000 filed March 30, 2010.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13617) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26690 Filed 10–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 13, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–85–001.
Applicants: Mystic Development, LLC, Fore River Development, LLC, Boston Generating, LLC, Mystic I, LLC, Constellation Mystic Power, LLC.
Description: Response to Deficiency Letter and Request for Shortened Comment Period and Expedited Review of Fore River Development, LLC, *et. al.*
Filed Date: 10/08/2010.
Accession Number: 20101008–5184.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: EC11–4–000.
Applicants: Conectiv Energy Supply, Inc.
Description: Application for approval under Section 203 of the Federal Power Act and request for expedited treatment and shortened comment period.
Filed Date: 10/07/2010.
Accession Number: 20101008–0201.
Comment Date: 5 p.m. Eastern Time on Thursday, October 28, 2010.

Docket Numbers: EC11–5–000.
Applicants: Morgan Stanley.
Description: Request for Reauthorization and Extension of Existing Blanket Authorization to Acquire Securities under Section 203(a)(2) of the FPA and Request for Expedited Action of Morgan Stanley.
Filed Date: 10/08/2010.
Accession Number: 20101008–5171.
Comment Date: 5 p.m. Eastern Time on Friday, October 29, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER95–1528–022.
Applicants: Wisconsin Public Service Corporation.
Description: Notice of Non-Material Change in Status for Market-Based Rate Authority of Wisconsin Public Service Corporation.
Filed Date: 10/07/2010.
Accession Number: 20101007–5168.
Comment Date: 5 p.m. Eastern Time on Thursday, October 28, 2010.

Docket Numbers: ER97–324–020; ER97–3834–026.
Applicants: DTE Energy Trading, Inc., The Detroit Edison Company
Description: Application of The Detroit Edison Company and DTE Energy Trading, Inc. for Continued Waiver of Affiliate Restrictions related to The Detroit Edison Company's Summer 2011 Auction for Capacity.
Filed Date: 10/12/2010.
Accession Number: 20101012–5365.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER10–1520–001; *ER10–1521–001; ER10–1522–001.*
Applicants: Occidental Power Services, Inc., Occidental Power Marketing, LP, Occidental Chemical Corporation.
Description: Errata to Notice of Change in Status of Occidental Power Services, Inc., *et. al.*
Filed Date: 10/12/2010.
Accession Number: 20101012–5272.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER10–2078–000; *ER10–2078–001.*
Applicants: White Oak Energy LLC.
Description: Supplement to Market-Based Rate Application of White Oak Energy LLC.
Filed Date: 10/08/2010.
Accession Number: 20101008–5169.
Comment Date: 5 p.m. Eastern Time on Friday, October 22, 2010.

Docket Numbers: ER11–59–000.
Applicants: Entergy Texas, Inc., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc.

Description: Entergy Texas, Inc. submits tariff filing per 35.13(a)(2)(iii: Proposed Extension of ICT Arrangement to be effective 12/31/9998.
Filed Date: 10/08/2010.
Accession Number: 20101008–5028.
Comment Date: 5 p.m. Eastern Time on Friday, October 15, 2010.

Docket Numbers: ER11–81–000.
Applicants: CPower, Inc.
Description: Request for Limited Waiver and Expedited Treatment of CPower, Inc.
Filed Date: 10/08/2010.
Accession Number: 20101008–5172.
Comment Date: 5 p.m. Eastern Time on Thursday, October 21, 2010.

Docket Numbers: ER11–91–000.
Applicants: Western Electricity Coordinating Council.
Description: Notice of Proposed Cancellation of Western Electricity Coordinating Council's Reliability Management System.
Filed Date: 10/12/2010.
Accession Number: 20101012–5219.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–26760 Filed 10–21–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

October 15, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–447–006.
Applicants: Black Oak Energy, LLC.
Description: Public Version-Notice of Non-Material Change in Status of Black Oak Energy, LLC.
Filed Date: 10/15/2010.
Accession Number: 20101015–5099.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER10–424–001.
Applicants: New York Independent System Operator, Inc.
Description: Motion to Amend Request for Waivers of Open Access Same Time Information System Regulations of New York Independent System Operator, Inc.
Filed Date: 10/12/2010.
Accession Number: 20101012–5363.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–118–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing in ER10–2280 per Order dated September 17 2010 to be effective 9/17/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5042.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–119–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Ministerial Filing to Reflect Bylaws Language Accepted in ER09–1192–003 to be effective 8/5/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5060.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–120–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii) : Ministerial Filing to Reflect Tariff Language Accepted in ER09–1050–003 to be effective 7/26/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5061.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–121–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35: Compliance Filing Revising Tariff in ER09–1050 (Order No. 719) to be effective 7/26/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5063.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–122–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): Revisions to Rate Schedule No. 315 to be effective 9/9/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5072.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protests do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–26758 Filed 10–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 15, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–6–000.
Applicants: Tanglewood Storage & Transportation LLC, J.P. Morgan Ventures Energy Corporation, Sempra Energy Trading LLC.
Description: Application for Authorization for Disposition and Acquisition of Jurisdictional Facilities and Request for Expedited Action of Sempra Energy Trading LLC *et al.*
Filed Date: 10/14/2010.
Accession Number: 20101014–5127.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1706–002.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–09–30 CAISO's IRRP Compliance Filing to be effective 7/3/2010.
Filed Date: 09/30/2010.
Accession Number: 20100930–5467.
Comment Date: 5 p.m. Eastern Time on Monday, October 25, 2010.

Docket Numbers: ER10–1750–000, ER10–1750–001, ER10–1751–000; ER10–1751–001.
Applicants: Stream Energy Pennsylvania, LLC.
Description: Stream Energy Pennsylvania, LLC *et al.* submits additional information requested by FERC reestablishment of a shortened 10-day comment period.
Filed Date: 10/13/2010.
Accession Number: 20101014–0009.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 27, 2010.

Docket Numbers: ER11–96–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits tariff filing per 35.13(a)(2)(iii): Belmont Transmission Service Agreement—2008 Amendments to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5046.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–116–000.
Applicants: Virginia Electric and Power Company.
Description: Notice of Cancellation of Generator Interconnection and Operating Agreement of Virginia Electric and Power Company.
Filed Date: 10/14/2010.
Accession Number: 20101014–5116.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER11–117–000.
Applicants: OGE Energy Resources, Inc.
Description: Notice of Cancellation of Market-Based Rate Tariff and Request for Waiver of Notice Period of OGE Energy Resources, Inc.
Filed Date: 10/14/2010.
Accession Number: 20101014–5126.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–26757 Filed 10–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

October 14, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–5–000.
Applicants: Sandy Ridge Wind, LLC.
Description: Sandy Ridge Wind, LLC Notice of Self-Certification of EWG Status.
Filed Date: 10/14/2010.
Accession Number: 20101014–5051.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1385–003; ER08–401–004; ER09–1429–004; ER99–2287–007.
Applicants: Black Hills Power, Inc., Black Hills/Colorado Electric Utility Co, Black Hills Wyoming, LLC, Cheyenne Light, Fuel and Power Company.
Description: Updated Market Power Analysis of the Black Hills Public Utilities for the Northwest Region.
Filed Date: 10/12/2010.
Accession Number: 20101012–5371.
Comment Date: 5 p.m. Eastern Time on Monday, December 13, 2010.

Docket Numbers: ER10–1424–001.
Applicants: Eagle Industrial Power Services (IL), LL.
Description: Eagle Industrial Power Services (IL), LLC submits a notice of name change.
Filed Date: 10/08/2010.
Accession Number: 20101008–0006.
Comment Date: 5 p.m. Eastern Time on Friday, October 29, 2010.

Docket Numbers: ER10–1482–001; OA10–10–001.
Applicants: Wildorado Wind, LLC and Wildorado Wind Two, LLC.
Description: Wildorado Wind, LLC et al submits a revision to their FERC Rate Schedule 1 to reflect the effective date of 9/30/10.
Filed Date: 10/08/2010.
Accession Number: 20101008–0203.
Comment Date: 5 p.m. Eastern Time on Friday, October 29, 2010.

Docket Numbers: ER10–2298–001.
Applicants: Enserco Energy Inc.
Description: Enserco Energy Inc. submits tariff filing per 35.17(b): MBR Application of Enserco Energy LLC to be effective 9/1/2010.
Filed Date: 10/12/2010.
Accession Number: 20101012–5354.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 02, 2010.

Docket Numbers: ER10–2438–003.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35: ISO–NE Third Amendment Errata to Baseline Filing to be effective 8/30/2010.
Filed Date: 10/12/2010.
Accession Number: 20101012–5147.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 02, 2010.

Docket Numbers: ER10–2345–002.
Applicants: Woodland Pulp LLC.
Description: Woodland Pulp LLC submits tariff filing per 35.17(b): Amendment to Market-Based Rate Application Reflecting Change in Status to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5165.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 27, 2010.

Docket Numbers: ER10–2457–001.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits Revised Section No. 23.1 for inclusion in FPL's Open Access Transmission Tariff, Order No. 739 Section 23 Compliance, to be effective 10/1/2010.
Filed Date: 10/12/2010.
Accession Number: 20101012–5005.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 02, 2010.

Docket Numbers: ER10–2710–003.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits their baseline filing of its Open Access Transmission Tariff, Amended and Restated Operating Agreement *etc,* to be effective 9/17/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5001.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER10–2713–002.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: PJM Rate Schedule Errata Filing to be effective 9/17/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5179.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER10–2748–001.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Operating Companies submits amendments to Entergy's September 17, 2010 filing which extend the Subsequent Term of the Independent Coordinator of Transmission, to be effective 11/17/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5000.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER10–2776–001.
Applicants: Wells Fargo Commodities, LLC.
Description: Wells Fargo Commodities, LLC submits its Market-Based Rate Tariff, to be effective 9/17/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5004.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–62–000.
Applicants: El Segundo Power LLC.

Description: El Segundo Power LLC submits tariff filing per 35.12: El Segundo Power—Amendment to Market-Based Rate Tariffs to be effective 10/11/2010.
Filed Date: 10/08/2010.
Accession Number: 20101008–5125.
Comment Date: 5 p.m. Eastern Time on Friday, October 29, 2010.

Docket Numbers: ER11–63–000.
Applicants: Long Beach Peakers LLC.
Description: Long Beach Peakers LLC submits tariff filing per 35.12: Long Beach Peakers—Amendment to Market-Based Rate Tariffs to be effective 10/11/2010.
Filed Date: 10/08/2010.
Accession Number: 20101008–5127.
Comment Date: 5 p.m. Eastern Time on Friday, October 29, 2010.

Docket Numbers: ER11–87–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Errata to Docket ER11–87–000 re Compliance Filing in Docket ER10–1762–001 to be effective 9/17/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5101.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–93–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: G252 LGIA Filing to be effective 10/14/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5020.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–94–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits tariff filing per 35.12: NSTAR Electric Establishment of Tariff Identifier to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5039.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–95–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 5 With Florida Power & Light to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5040.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–97–000.
Applicants: Louisville Gas and Electric Company.
Description: Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: 10_13_10 205 Filing Executed EEI Interconnection to be effective 12/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5061.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–98–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities Company submits tariff filing per 35.13(a)(2)(iii: 10_13_10 KU Concurrence Executed EEI Interconnection to be effective 12/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5065.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–99–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): GRE–MN Power T–T Filing to be effective 10/14/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5111.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–100–000.
Applicants: Keystone Generation, LLC.
Description: Keystone Generation, LLC submits tariff filing per 35.13(a)(2)(iii): Keystone Succession Filing to be effective 9/21/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5112.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–101–000.
Applicants: Connecticut Yankee Atomic Power Company.
Description: Connecticut Yankee Atomic Power Company submits tariff filing per 35.12: Baseline Filing of Amended Rate Schedules to be effective 1/1/2011.
Filed Date: 10/13/2010.
Accession Number: 20101013–5113.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–102–000.
Applicants: Wildorado Wind, LLC, Wildorado Wind Two, LLC.
Description: Wildorado Wind, LLC submits tariff filing per 35.12: Assignment, Cotenancy and Common Facilities Agreement to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5116.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–103–000.
Applicants: The Potomac Edison Company.
Description: The Potomac Edison Company submits tariff filing per 35.15: Potomac Edison Cancellation of Tariff Record to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5158.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–104–000.
Applicants: Perryman Power, LLC.
Description: Perryman Power, LLC submits tariff filing per 35.13(a)(2)(iii): Perryman Power Succession filing to be effective 9/21/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5167.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–105–000.
Applicants: Wildorado Wind, LLC, Wildorado Wind Two, LLC.
Description: Wildorado Wind, LLC submits tariff filing per 35.13(a)(2)(iii): Revised Assignment, Cotenancy and Common Facilities Agreement to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5170.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–106–000.
Applicants: West Penn Power Company.
Description: West Penn Power Company submits tariff filing per 35.15: West Penn Cancellation of Tariff Record to be effective 10/13/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5171.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–107–000.
Applicants: Conemaugh Generation, LLC.
Description: Conemaugh Generation, LLC submits tariff filing per 35.13(a)(2)(iii): Conemaugh Succession Filing to be effective 9/21/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5183.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–108–000.
Applicants: C.P. Crane Power, LLC.
Description: C.P. Crane Power, LLC submits tariff filing per 35.13(a)(2)(iii): CP Crane Power Succession Filing to be effective 9/21/2010.
Filed Date: 10/13/2010.
Accession Number: 20101013–5187.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–109–000.
Applicants: Yankee Atomic Electric Company.
Description: Yankee Atomic Electric Company submits tariff filing per 35.12: Baseline Filing of Amended Rate Schedule to be effective 1/1/2011.
Filed Date: 10/13/2010.
Accession Number: 20101013–5202.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: ER11–111–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.12: PNM Rate Schedules and Agreements to be effective 10/15/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5026.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER11–112–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Application of Oklahoma Gas and Electric Company.
Filed Date: 10/12/2010.
Accession Number: 20101012–5372.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–113–000.
Applicants: Sandy Ridge Wind, LLC.
Description: Sandy Ridge Wind, LLC submits tariff filing per 35.12: Market-Based Rate Tariff to be effective 12/15/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5048.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER11–114–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35: 2010–10–14_Att-O_SPS_Changes_FERC_Filing to be effective 8/1/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5060.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER11–115–000.
Applicants: Louisville Gas and Electric Company.
Description: Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): ER08_1275 TVA NITSA and NOA Executed to be effective 7/18/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5065.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–1–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Application for authority to issue short-term debt of Oklahoma Gas and Electric Company.
Filed Date: 10/13/2010.
Accession Number: 20101013–5102.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–26756 Filed 10–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 14, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–67–000.
Applicants: Stephentown Regulation Services LLC.
Description: Stephentown Regulation Services LLC submits tariff filing per 35.12: Stephentown FERC Electric, Volume No. 1 Baseline Filing to be effective 10/8/2010.
Filed Date: 10/08/2010.
Accession Number: 20101008–5139.
Comment Date: 5 p.m. Eastern Time on Friday, October 29, 2010.

Docket Numbers: ER11–68–000.
Applicants: Morgan Stanley Capital Group Inc.
Description: Morgan Stanley Capital Group Inc. submits tariff filing per 35.12: Transmission Assignment Tariff to be effective 10/11/2010.
Filed Date: 10/08/2010.
Accession Number: 20101008–5150.
Comment Date: 5 p.m. Eastern Time on Friday, October 29, 2010.

Docket Numbers: ER11–69–000.
Applicants: Columbus Southern Power Company.
Description: Columbus Southern Power Company submits concurrences

to the baseline Open Access Transmission Service Tariff pursuant to Order No 714, to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5007.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–70–000.

Applicants: Indiana Michigan Power Company.

Description: Indiana Michigan Power Company submits concurrences to the baseline Open Access Transmission Service Tariff pursuant to Order No 714, to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5009.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–71–000.

Applicants: Kentucky Power Company.

Description: Kentucky Power Company submits tariff filing per 35.12: 20101011 OATT Concurrence—KPCo to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5010.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–72–000.

Applicants: Kingsport Power Company.

Description: Kingsport Power Company submits tariff filing per 35.12: 20101011 OATT Concurrence—KgPCo to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5011.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–73–000.

Applicants: Ohio Power Company.

Description: Ohio Power Company submits tariff filing per 35.12: 20101011 OATT Concurrence—OPCo to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5012.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–74–000.

Applicants: Public Service Company of Oklahoma.

Description: Public Service Company of Oklahoma submits tariff filing per 35.12: 20101011 OATT Concurrence—PSO to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5013.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–75–000.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits tariff filing per 35.12: 20101011 OATT Concurrence—SWEPCO to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5014.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–76–000.

Applicants: Wheeling Power Company.

Description: Wheeling Power Company submits tariff filing per 35.12: 20101011 OATT Concurrence—WPCo to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5015.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–77–000.

Applicants: AEP Texas Central Company.

Description: AEP Texas Central Company submits tariff filing per 35.12: 20101011 OATT Concurrence—TCC to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5016.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–78–000.

Applicants: AEP Texas North Company.

Description: AEP Texas North Company submits tariff filing per 35.12: 20101011 OATT Concurrence—AEP TNC to be effective 9/1/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5017.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–80–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO–NE QPCRD Revisions to be effective 1/1/2011.

Filed Date: 10/12/2010.

Accession Number: 20101012–5112.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–82–000.

Applicants: RRI Energy Services, Inc.

Description: RRI Energy Services, Inc. submits their Compliance Filing, to be effective 9/27/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5169.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–83–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.12: Rate Schedule No. 173 of Carolina Power and Light Co. to be effective 12/11/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5172.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–84–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 189 of Carolina Power and Light Co. to be effective 12/11/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5173.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–85–000.

Applicants: Societe Generale Energie (USA) Corp.

Description: Societe Generale Energie (USA) Corp. submits tariff filing per 35.12: SGE USA Baseline Tariff Filing to be effective 10/12/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5178.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–86–000.

Applicants: RRI Energy Florida, LLC.

Description: RRI Energy Florida, LLC submits tariff filing per 35: Compliance Filing to be effective 9/27/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5180.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–87–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff Compliance Filing, to be effective 9/17/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5202.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–88–000.

Applicants: Flat Rock Windpower LLC.

Description: Flat Rock Windpower LLC submits tariff filing per 35.15: Cancellation of Duplicate Baseline Tariff to be effective 10/12/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5203.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–89–000.

Applicants: Flat Rock Windpower II LLC.

Description: Flat Rock Windpower II LLC submits tariff filing per 35.15: Cancellation of Duplicate Baseline Tariff to be effective 10/12/2010.

Filed Date: 10/12/2010.

Accession Number: 20101012–5209.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–90–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): ISA No. 2644, T41—PJM, PSEG Fossil and PSEG Company to be effective 9/17/2010.
Filed Date: 10/12/2010.
Accession Number: 20101012–5213.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: ER11–92–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 205 filing—Tarff Amendment & Request for Expedited Consideration & Waiver to be effective 10/21/2010.
Filed Date: 10/12/2010.
Accession Number: 20101012–5355.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–26755 Filed 10–21–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ11–2–000]

East Kentucky Power Cooperative, Inc.; Notice of Filing

October 15, 2010.

Take notice that on October 8, 2010, East Kentucky Power Cooperative, Inc. submitted its tariff filing per 35.25(e): Baseline Non-Jurisdictional Tariff Filing to be effective 10/8/2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 29, 2010.

Kimberly D. Bose,
Secretary.
[FR Doc. 2010–26688 Filed 10–21–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–113–000]

Sandy Ridge Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 15, 2010.

This is a supplemental notice in the above-referenced proceeding of Sandy Ridge Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 4, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–26759 Filed 10–21–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8993–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 10/11/2010 Through 10/15/2010

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100410, Final EIS, USFS, OR, Cobbler II Timber Sale and Fuels Reduction Project, Proposing Vegetation and Fuels Management to Improve Health and Vigor Upland Forest Stands and Reduce Hazardous and Ladder Fuels, Walla Walla Ranger District, Umatilla National Forest, Wallowa and Union Counties, OR, Wait Period Ends: 11/22/2010, Contact: Betsy Kaiser 509–522–6290. This document is available on the Internet at: http://*www.fs.fed.us/r6/uma/projects/readroom/.*

EIS No. 20100411, Draft Supplement, USFS, ID, Nez Perce National Forest (NPNF), New Information and Proposed Route Designations, Designated Routes and Areas for Motor Vehicle Use (DRAMVU), Implementation, Idaho County, ID, Comment Period Ends: 12/06/2010, Contact: Jennie Fischer 208–983–4048.

EIS No. 20100412, Final Supplement, USFS, CA, Beaverslide Timber Sale and Fuel Treatment Project, Additional Analysis and New Information, Six Rivers National Forest, Mad River Range District, Trinity County, CA, Wait Period Ends: 11/22/2010, Contact: Thomas Hudson 707–574–6233.

EIS No. 20100413, Final EIS, BIA, NY, Cayuga Indian Nation of New York Conveyance of Land into Trust Project, Approval of a 125 + Acre Fee-To-Trust Property Transfer of Seven Separate Parcel located in the Village of Union Springs and Town of Springport and Montezuma in Cayuga County and the Town of Seneca Falls in Seneca County, NY, Wait Period Ends: 11/22/2010, Contact: Kurt Chandler 615–564–6832.

EIS No. 20100414, Final EIS, USFS, SD, Mystic Range Project Area, Propose to Reauthorize Grazing of Domestic Livestock on Eight Allotments, Black Hills National Forest, Pennington and Custer Counties, SD, Wait Period Ends: 11/22/2010, Contact: Katie Van Alstyne 605–343–1567.

EIS No. 20100415, Final EIS, DOE, CA, ADOPTION—Ivanpah Solar Electric Generating System (07–AFC–5) Project, Proposal to Construct a 400-m Megawatt Concentrated Solar Power Tower, Thermal-Electric Power Plant, San Bernardino County, CA, Wait Period Ends: 11/22/2010, Contact: Matthew McMillen 202–586–7248. U.S. DOE has adopted the DOI/BIA's FEIS #20100292 filed 07/29/2010. DOE was a Cooperating Agency for the above FEIS. Recirculation of the document is not necessary under Section 1506.3(b) of the CEQ Regulations.

EIS No. 20100416, Draft EIS, WAPA, CA, Rice Solar Energy Project, Proposed 150 megawatt Solar Energy Generating Facility, a 161-kV/230-kV Electrical Transmission Tie-Line and a 161-kV/230-kV Electrical Interconnection Switchyard, Riverside County, CA, Comment Period Ends: 01/19/2011, Contact: Liana Reilly 720–962–7253.

EIS No. 20100417, Final EIS, USN, 00, United States Marine Corps Joint Strike Fighter F–35B West Coast Basing, To Efficiently and Effectively Maintain Combat Capability and Mission Readiness, CA and AZ, Wait Period Ends: 11/22/2010, Contact: Adrianne Saboya 619–532–4742.

EIS No. 20100418, Final EIS, USN, 00, East Coast Basing of the F–35B Project, Construction, Demolition and/or Modification Airfield Facilities and Infrastructure, SC and NC, Wait Period Ends: 11/22/2010, Contact: Linda Blount 757–341–0491.

EIS No. 20100419, Final EIS, USACE, CA, American River Watershed Common Features Project/Natomas Post-Authorization Change Report/Natomas Levee Improvement Program, Phase 4b Landside Improvements Project, Sacramento and Sutter Counties, CA, Wait Period Ends: 11/22/2010, Contact: Elizabeth Holland 916–557–6763.

EIS No. 20100420, Final EIS, USFS, OR, Mill Creek Allotment Management Plans Project, Reauthorization of Grazing Permit on Five Grazing Allotments, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, Wait Period Ends: 11/22/2010, Contact: Marcy Anderson 541–416–6463.

EIS No. 20100421, Final EIS, USACE, CA, Sunridge Properties Project, Implementing Alternatives for Six Residential Development Projects City of Rancho Cordova, Sacramento Counties, CA, Wait Period Ends: 11/22/2010, Contact: Michael Jewell 916–557–6605.

EIS No. 20100422, Third Final Supplement, FTA, 00, South Corridor Portland-Milwaukie Light Rail Project, Proposal to Develop Light Rail Transit in Final Segment, Connecting Downtown Portland, OR, the City of Milwaukie and north Clackamas and Mulnomah Counties, OR and Clark County, WA, Wait Period Ends: 11/22/2010, Contact: James Saxton 206–220–4311.

Amended Notices

EIS No. 20100326, Draft EIS, NPS, SD, South Unit—Badlands National Park, General Management Plan, Implementation, SD, Comment Period Ends: 11/01/2010, Contact: Eric J. Brunnemann 605–433–5361. Revision of FR Notice Published 08/20/2010: Extending Comment Period from 10/18/2010 to 11/01/2010.

Dated: October 19, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–26739 Filed 10–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8851–1]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that

is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

PP 0E7779. (EPA–HQ–OPP–2010–0496). Interregional Research Project Number 4, 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR part 180 for residues of the herbicide dicamba, 3,6-dichloro-o-anisic and its metabolite 3,6-dichloro-5-hydroxy-o-anisic acid (5–OH dicamba), in or on teff, forage at 90.0 parts per million (ppm); teff, grain at 6.0 ppm; teff, straw at 30.0 ppm; and teff, hay at 40.0 ppm. Adequate enforcement methods are available for the analysis of residues of dicamba and its relevant metabolites in or on plant and livestock commodities. Pesticide Analytical Manual (PAM) Vol. II lists appropriate analytical methods, based on gas chromatography with electron capture detection (GC/ECD), that are sufficient to provide for the enforcement of proposed dicamba tolerances in teff forage, grain, straw and hay. Contact: Laura E. Nollen, (703) 305–7390, e-mail address: *nollen.laura@epa.gov.*

New Tolerance Exemption

1. PP 0E7769. (EPA–HQ–OPP–2010–0803). Lighthouse Product Services, 3937 Cedarwood Lane, Johnstown, CO 80534 on behalf of Winfield Solutions, LLC, 1080 County Road F West, Shoreview, MN 55146–2910, proposes to establish an exemption from the requirement of a tolerance for residues of Kerosene/Fuel Oil #1 (CAS Reg. Nos. 8008–20–6 or 64742–81–0) under 40 CFR 180.920 when used as a pesticide inert ingredient in pesticide formulations. The petitioner believes no analytical method is needed because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations. Contact: Elizabeth Fertich, (703) 347–8560, e-mail address: *fertich.elizabeth@epa.gov.*

2. PP 0E7780. (EPA–HQ–OPP–2010–0838). NOD Apiary Products USA Inc., 8345 NW 66th Street #8418, Miami, FL 33166, proposes to amend an exemption from the requirement of a tolerance for residues of 1,4-benzene dicarboxylic acid, (or dimethyl ester), polymer with 1,4-butanediol, adiptic acid, hexamethylene diisocyanate and further reacted with no more than 1% by weight of polyhydric alcohol, (CAS Reg. No. 55231–08–8) under 40 CFR 180.920 when used as a pesticide inert ingredient (component of controlled release agent) in honeybee hive miticide formulations. As there is no significant residue expected and as the petition is for a tolerance exemption, no analytical method is required. Contact: Kerry Leifer, (703) 308–8811, e-mail address: *leifer.kerry@epa.gov.*

3. PP 0E7786. (EPA–HQ–OPP–2010–0837). NOD Apiary Products USA Inc., 8345 NW 66th Street #8418, Miami, FL 33166, proposes to establish an exemption from the requirement of a tolerance for residues of the D(+)-lactide-L(-)-lactide-meso-lactide polymer (CAS Reg. No. 9051–89–2) under 40 CFR 180.920 when used as an inert ingredient (component of controlled release agent) in honeybee hive miticide formulations. As there is no significant residue expected and as the petition is for a tolerance exemption, no analytical method is required. Contact: Kerry Leifer, (703) 308–8811, e-mail address: *leifer.kerry@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 14, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–26720 Filed 10–21–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9216–7]

Proposed Administrative Settlement Agreement Under Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act for the Crown Vantage Landfill Superfund Site Located in Alexandria Township, Hunterdon County, NJ.

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement agreement ("Settlement Agreement") with Georgia-Pacific Consumer Products, LP and International Paper Company (collectively "Settling Parties") pursuant to Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622. The Settlement Agreement provides for Settling Parties' payment of certain response costs incurred by EPA at the Crown Vantage Landfill Superfund Site located in Alexandria Township, Hunterdon County, New Jersey.

In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), this notice is being published to inform the public of the proposed Settlement Agreement and of the opportunity to comment. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, 17th floor, New York, New York 10007–1866.

DATES: Comments must be provided by November 22, 2010.

ADDRESSES: Comments should reference the Crown Vantage Landfill Superfund Site, EPA Index No. 02–2010–2021 and should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained from Elizabeth La Blanc, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3106.

FOR FURTHER INFORMATION CONTACT: Elizabeth La Blanc, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3106.

Dated: September 29, 2010.

Walter Mugdan,

Director, Emergency and Remedial Response Division.

[FR Doc. 2010–26735 Filed 10–21–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 10–204; DA 10–1918]

The Tennis Channel, Inc. v. Comcast Cable Communications, LLC; File No. CSR–8258–P

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document designates a program carriage complaint for hearing before an Administrative Law Judge ("ALJ") to resolve the factual disputes and to return an Initial Decision.

DATES: The Tennis Channel, Inc. ("The Tennis Channel") and Comcast Cable Communications, LLC ("Comcast") shall each file with the Chief, Enforcement Bureau and Chief ALJ, by October 15, 2010, its respective elections as to whether it wishes to proceed to Alternative Dispute Resolution ("ADR"). The hearing proceeding is suspended during this time. If one or both of the parties do not elect ADR, then the hearing proceeding will commence on October 18, 2010. In order to avail itself of the opportunity to be heard, The Tennis Channel and Comcast, in person or by their attorneys, shall each file with the Commission, by October 22, 2010, a written appearance stating that it will appear on the date fixed for hearing and present evidence on the issues specified herein.

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

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, *David.Konczal@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the *Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture,* DA 10–1918, adopted and released on October 5, 2010. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis of the Order

I. Introduction

1. By this *Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture* ("*Order*"), the Chief, Media Bureau ("Bureau"), pursuant to delegated authority, hereby designates for hearing before an ALJ the above-captioned program carriage complaint filed by The Tennis Channel against Comcast. The complaint alleges that Comcast, a vertically integrated multichannel video programming distributor ("MVPD"), discriminated against The Tennis Channel, a video programming vendor, on the basis of affiliation, with the effect of unreasonably restraining The Tennis Channel's ability to compete fairly, in violation of Section 616(a)(3) of the Communications Act of 1934, as amended ("the Act"), and Section 76.1301(c) of the Commission's Rules. 47 U.S.C. 536(a)(3); 47 CFR 76.1301(c). The complaint arises from Comcast's denial of The Tennis Channel's request to be repositioned from a premium sports tier to a more broadly distributed programming tier.

2. After reviewing The Tennis Channel's complaint, we find that The Tennis Channel has put forth sufficient evidence supporting the elements of its program carriage discrimination claim to establish a *prima facie* case. Below,

we review the evidence from The Tennis Channel's complaint establishing a *prima facie* case. We note that in the most recent program carriage decisions making a *prima facie* determination, the Bureau provided a detailed discussion of the defendant's counter-arguments to each of the claims made by the complainant. *See Herring Broadcasting Inc., d/b/a WealthTV, et al.,* Memorandum Opinion and Hearing Designation Order, 73 FR 65312, 65313–18, Nov. 3, 2008 ("*WealthTV HDO*"); *NFL Enters. LLC* v. *Comcast Cable Communications, LLC,* Memorandum Opinion and Hearing Designation Order, 73 FR 65312, 65319–23, Nov. 3, 2008 ("*NFL Enterprises HDO*"); *TCR Sports Broadcasting Holding, LLP, d/b/a Mid-Atlantic Sports Network* v. *Comcast Corp.,* Memorandum Opinion and Hearing Designation Order, 73 FR 65312, 65323–27, Nov. 3, 2008 ("*MASN II HDO*"). The Bureau did not follow this approach, however, in earlier program carriage cases. *See TCR Sports Broadcasting Holding, L.L.P.* v. *Comcast Corp.,* Memorandum Opinion and Hearing Designation Order, 71 FR 47222, Aug. 16, 2006 ("*MASN I HDO*"); *Classic Sports Network, Inc.* v. *Cablevision Systems Corp.,* Memorandum Opinion and Hearing Designation Order, 12 FCC Rcd 10288 (CSB 1997) ("*Classic Sports*"). We believe the approach taken in *MASN I HDO* and *Classic Sports* is more appropriate for a *prima facie* determination, which requires the Bureau to assess the evidence set forth in the complaint. Moreover, providing a detailed discussion of the defendant's counter-arguments to each of the claims made by the complainant may incorrectly imply that the Bureau is taking a position on the merits of those arguments. While we do not summarize each of Comcast's counter-arguments below, our review of the existing record, including Comcast's Answer, makes clear that there are substantial and material questions of fact as to whether Comcast has engaged in conduct that violates the program carriage provisions of the Act and the Commission's rules.

3. While we rule on a threshold procedural issue regarding application of the program carriage statute of limitations, we do not reach the merits on any of the other issues discussed below. Rather, the existing record, including Comcast's Answer, makes clear that there are substantial and material questions of fact as to whether Comcast has engaged in conduct that violates the program carriage provisions of the Act and the Commission's rules. We therefore initiate this hearing proceeding. We direct the Presiding Judge to develop a full and complete record and to conduct a *de novo* examination of all relevant evidence in order to make an Initial Decision.

4. As set forth below, the following matters are not designated for the ALJ to resolve: (i) Whether The Tennis Channel has put forth evidence in its complaint sufficient to warrant designation of this matter for hearing; and (ii) whether The Tennis Channel's complaint was filed in accordance with the program carriage statute of limitations. As required by the Commission's Rules, to the extent Comcast seeks Commission review of our decision on these issues, such review, if any, shall be deferred until exceptions to the Initial Decision in this proceeding are filed. *See* 47 CFR 1.115(e)(3).

II. Background

5. Section 616(a)(3) of the Act directs the Commission to establish rules governing program carriage agreements and related practices between cable operators or other MVPDs and video programming vendors that, among other things: "prevent [an MVPD] from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors." 47 U.S.C. 536(a)(3). In implementing this statutory provision, the Commission adopted Section 76.1301(c) of its rules, which closely tracks the language of Section 616(a)(3). *See* 47 CFR 76.1301(c). The Commission has established specific procedures for the review of program carriage complaints. *See* 47 CFR 76.1302.

6. While those procedures provide for resolution on the basis of a complaint, answer, and reply, the Commission expected that, in most cases, it would be unable to resolve carriage complaints solely on the basis of a written record. *Program Carriage Second Report and Order,* 58 FR 60390, Nov. 16, 1993. Rather, it anticipated that the majority of complaints would require a hearing before an ALJ, given that alleged Section 616 violations typically involve contested facts and behavior related to program carriage negotiations. In such cases, where the complainant is found to have established a *prima facie* case but disposition of the complaint requires the resolution of factual disputes or extensive discovery, the parties can elect either ADR or an adjudicatory hearing before an ALJ. Pursuant to Section 76.7(g)(1) of the Commission's Rules, the Commission may refer to an ALJ entire proceedings or discrete issues arising from proceedings. *See* 47 CFR 76.7(g)(1); *see also 1998 Biennial Regulatory Review,* 64 FR 6565, Feb. 10, 1999. If the parties proceed to a hearing before an ALJ, the ALJ's Initial Decision is directly appealable to the Commission. 47 CFR 1.276. The appropriate relief for violation of the program carriage provisions is determined on a case-by-case basis. Available sanctions and remedies include forfeiture and/or mandatory carriage and/or carriage on terms revised or specified by the Commission. For the purpose of our *prima facie* determination, we discuss below the factual bases for The Tennis Channel's claim of program carriage discrimination.

7. The Tennis Channel is a national cable sports network that launched in May 2003 with a broad range of racquet-sport-related programming. The Tennis Channel is a video programming vendor as defined in Section 76.1300(e) of the Commission's Rules. *See* 47 CFR 76.1300(e). The Tennis Channel states that, to foster its growth, it offered preferential terms to distributors, like Comcast, that agreed to carry the network before it had become well-established. The Tennis Channel asserts that, since its launch on Comcast systems, it has become the "leading provider of 24/7 tennis programming" and "the only cable network in the nation dedicated to covering the sport." According to the network, in 2008, it offered more than 2,700 hours of worldwide event coverage, including major coverage of three of the four Grand Slam events—the Australian Open, the French Open, and Wimbledon. The Tennis Channel states that in 2009 it added the fourth Grand Slam event, the U.S. Open, to its programming, as well as other event coverage such as exclusive telecasts of every worldwide and U.S. Davis Cup and Fed Cup match. In addition to coverage of more than 70 top tennis tournaments worldwide, The Tennis Channel offers non-event content, including original lifestyle, instructional, and fitness series, specials, and short-form programs featuring the sport's most popular figures.

8. Comcast is a multiple system cable operator with approximately 24 million subscribers nationwide. Comcast is a multichannel video programming distributor, as defined in Section 76.1300(d) of the Commission's Rules. *See* 47 CFR 76.1300(d). Comcast serves customers in 39 States and the District

of Columbia, and in 24 of the top 30 designated market areas ("DMAs"). A DMA is a local television market area designated by The Nielsen Company (formerly, Nielsen Media Research). There are 210 DMAs in the United States. In addition to its role as a programming distributor, Comcast is a programming supplier by virtue of its affiliation with several cable networks. Among other interests, Comcast's parent company holds a financial stake in the Golf Channel, the MLB Network, the NHL Network, NBA TV, and a variety of other national cable programming networks. Comcast's parent company also owns Versus, a national sports network that provides programming coverage of multiple sports, as well as a number of regional sports networks ("RSNs"). In general, Comcast carries the Golf Channel, Versus, and its affiliated RSNs on its widely distributed Expanded Basic/Digital Starter tier.

9. In 2005, The Tennis Channel executed an affiliation agreement with Comcast that provided for carriage of the network on Comcast systems nationwide. The agreement did not specify the tier on which Comcast would carry the network. With limited exceptions, Comcast has carried The Tennis Channel on a premium sports tier, the "Sports and Entertainment Package" ("SEP"), since the parties executed their carriage agreement. A few Comcast systems initially launched The Tennis Channel on a digital basic tier, but relocated the network to the premium sports tier. Comcast currently carries The Tennis Channel on the premium sports tier in all of its systems nationwide except one.

10. The Tennis Channel states that in early 2009, after it concluded strategic efforts to enhance the quality of its technical service and programming content, it proposed that Comcast reposition the network to a level of carriage that The Tennis Channel believed was justified given the network's expansion and service improvements. Following discussions between the parties in the spring of 2009, Comcast informed The Tennis Channel in June 2009 that it would not relocate the network to a more widely distributed programming tier. The Tennis Channel asserts that during the course of those discussions, Comcast indicated that it would retier The Tennis Channel only if the network offered a financial "incentive" to do so. Comcast states that it decided to keep The Tennis Channel on a sports tier because (i) increasing the network's distribution would increase Comcast's costs; (ii) no Comcast system expressed an interest in repositioning the network; and (iii) there was no indication of subscriber defections to another MVPD that carried the network more widely. Comcast states that it informed The Tennis Channel that it could attempt to seek broader distribution with individual Comcast systems on a market-by-market basis. Consequently, in December 2009, The Tennis Channel notified Comcast of its intention to file a program carriage complaint with the Commission, and brought its complaint shortly thereafter. Pursuant to Section 76.1302(b) of the Commission's Rules, The Tennis Channel provided its pre-filing notification to Comcast on December 10, 2009. The Tennis Channel filed its program carriage complaint with the Commission on January 5, 2010.

III. Discussion

11. Based on our review of the complaint and as explained more fully below, we conclude that The Tennis Channel has established a *prima facie* case of program carriage discrimination pursuant to Section 616(a)(3) of the Act and Section 76.1301(c) of the Commission's Rules. 47 U.S.C. 536(a)(3); 47 CFR 76.1301(c). When filing a program carriage complaint, the video programming vendor carries the burden of proof to establish a *prima facie* case that the defendant MVPD has engaged in behavior prohibited by Section 616 and the Commission's implementing rules. In previous cases assessing whether a complainant has established a *prima facie* case of program carriage discrimination, the Bureau has considered whether the complaint contains sufficient evidence to support the elements of a program carriage discrimination claim: (i) The complainant is a video programming vendor as defined in Section 76.1300(e) of the Commission's Rules; (ii) the defendant is an MVPD as defined in Section 76.1300(d) of the Commission's Rules; (iii) the complainant programmer is similarly situated to a programmer affiliated with the defendant MVPD; (iv) the defendant MVPD has treated the complainant programmer differently from its similarly situated, affiliated programmer with respect to the selection, terms, or conditions for carriage; and (v) the defendant MVPD's discriminatory conduct has the effect of unreasonably restraining the ability of the complainant programmer to compete fairly. *See* 47 CFR 76.1302(c); *WealthTV HDO,* 73 FR 65312, 65312–18, Nov. 3, 2008; *NFL Enterprises HDO,* 73 FR 65312, 65318–23, Nov. 3, 2008; *MASN II HDO,* 73 FR 65312, 65323–29, Nov. 3, 2008; *MASN I HDO,* 71 FR 47222, Aug. 16, 2006; *Hutchens Communications, Inc.* v. *TCI Cablevision of Georgia, Inc.,* Memorandum Opinion and Order, 9 FCC Rcd 4849, para. 27 (CSB 1994); *see also Program Carriage Second Report and Order,* 58 FR 60390, Nov. 16, 1993.

12. With regard to the first and second factors above, the parties agree that Comcast is an MVPD and that The Tennis Channel is a video programming vendor as defined in the Commission's Rules. For purposes of the third factor, Comcast admits that it is affiliated with the Golf Channel and Versus. With respect to the remaining factors, we conclude that The Tennis Channel has put forth sufficient evidence in its complaint to establish a *prima facie* case that Comcast has engaged in unlawful discrimination in the "selection of * * * video programming" by declining to reposition the network to a more widely distributed programming tier, while carrying comparable affiliated networks on such a tier. 47 U.S.C. 536(a)(3). (As discussed below, The Tennis Channel does not contend that its existing affiliation agreement with Comcast contains discriminatory "terms" or "conditions." The Tennis Channel claims that Comcast has impermissibly discriminated in its "selection" of The Tennis Channel for placement on a sports tier while selecting its affiliated networks for placement on a more widely distributed programming tier. *See NFL Enterprises HDO,* 73 FR 65312, 65318–23, Nov. 3, 2008 (program carriage complaint alleging that defendant impermissibly discriminated by selecting complainant for placement on sports tier while selecting affiliated networks for placement on a more widely distributed programming tier).) We do not reach the merits of this claim. Rather, we find that the existing record, including Comcast's Answer, makes clear that there are significant and material questions of fact warranting resolution at hearing. Because we are not ruling on the merits of The Tennis Channel's claims at this *prima facie* stage, we find it premature to address Comcast's arguments regarding the need to interpret Section 616(a)(3) of the Act and Section 76.1301(c) of the Commission's Rules narrowly to protect Comcast's First Amendment rights.

A. Procedural Issues

13. As a threshold matter, we reject Comcast's contention that The Tennis Channel's complaint is foreclosed as untimely filed under the program carriage statute of limitations. Pursuant to Section 76.1302(f) of the Commission's Rules, an aggrieved programmer has a one-year period in

which to file a program carriage complaint that commences upon the occurrence of one of three specified events. 47 CFR 76.1302(f). We find that the third of those triggering events—the provision of an aggrieved programmer's pre-filing notification pursuant to Section 76.1302(b) of the Commission's Rules—is present in this case. *See* 47 CFR 76.1302(f)(3). (We agree with Comcast that the limitations period in Section 76.1302(f)(2) of the Commission's Rules, which governs carriage offers unrelated to existing affiliation agreements, is inapplicable in this case.) Contrary to Comcast's assertions, nothing in the text of Section 76.1302(f)(3) limits the applicability of that provision to situations where the defendant "unreasonably refuses to negotiate with [the] complainant." While Comcast notes that the rule now found at Section 76.1302(f)(3) formerly contained language limiting its applicability to refusals to negotiate, the Commission eliminated this language in 1994. *See Program Carriage Second Report and Order,* 58 FR 60390, Nov. 16, 1993; *Program Carriage Memorandum Opinion and Order,* 59 FR 43776, Aug. 25, 1994. Although Comcast contends that this language was eliminated to accommodate program carriage complaints filed by MVPDs and was not intended to otherwise alter the intent of this provision, the plain language of the rule allows a program carriage complaint to be filed within one year of the pre-filing notice, provided that the claim is not otherwise barred by one of the other two triggering events. *WealthTV HDO,* 73 FR 65312, 65316, Nov. 3, 2008 ("the plain language of the Commission's rules provides that the statute of limitations is satisfied if the program carriage complaint is filed within one year of the pre-filing notice"). On its face, Section 76.1302(f)(3) arguably could be read to allow a complainant to file a program carriage complaint based on allegedly unlawful conduct that occurred years before the filing of the pre-filing notice provided the complaint was filed within one year of the pre-filing notice. We are not presented with such a case here. Comcast informed The Tennis Channel in June 2009 that it would not relocate the network to a more widely distributed programming tier. While Comcast states that it invited The Tennis Channel to seek broader distribution with individual Comcast systems on a market-by-market basis, it is undisputed that in June 2009 Comcast rejected The Tennis Channel's proposal that it be moved to a more widely distributed tier across Comcast's entire subscriber base. The Tennis Channel filed its program carriage complaint within one year of this allegedly discriminatory refusal to retier the Tennis Channel, as well as within one year of its pre-filing notice. Accordingly, we conclude that the complaint was timely filed pursuant to Section 76.1302(f)(3) of the Commission's Rules. (Similarly, in both *NFL Enterprises HDO* and *MASN II HDO,* the complainant filed its complaint within one year of the pre-filing notice as well as within one year of the alleged discriminatory act.)

14. We disagree with Comcast that The Tennis Channel's complaint is barred by Section 76.1302(f)(1) of the rules, which establishes a one-year period for the filing of a program carriage complaint that commences with the "[execution of] a contract with [an MVPD] that a party alleges to violate one or more of the [program carriage] rules." 47 CFR 76.1302(f)(1). The timeliness of The Tennis Channel's complaint is not an issue designated for resolution by the Presiding Judge. As required by the Commission's Rules, to the extent Comcast seeks Commission review of our decision on this issue, such review, if any, shall be deferred until exceptions to the Initial Decision in this proceeding are filed. *See* 47 CFR 1.115(e)(3).

15. Although the parties executed their existing carriage agreement in 2005, The Tennis Channel does not claim that this agreement contains unlawfully discriminatory prices, terms, or conditions. Nor do the parties dispute that Comcast has abided by the explicit terms of the 2005 agreement. The agreement at issue did not otherwise specify the tier on which Comcast would carry the network. Comcast thus has the discretion to carry The Tennis Channel to a greater number of subscribers than specified in the contract and on a more widely distributed tier than the premium sports tier on which Comcast currently carries The Tennis Channel. The gravamen of The Tennis Channel's complaint is that Comcast has refused to exercise its discretion to do so, while at the same time carrying its allegedly similar affiliated networks on a more widely distributed tier, and has thus failed to meet its obligation under Section 616(a)(3) of the Act and Section 76.1301(c) of the Commission's Rules to avoid discrimination on the basis of affiliation. It is this refusal, not the terms of the contract, which forms the basis for The Tennis Channel's complaint. As discussed above, The Tennis Channel establishes that this refusal to retier occurred in June 2009. The Tennis Channel filed its complaint within one year of this date, as well as within one year of the pre-filing notice.

16. This interpretation is consistent with Bureau precedent defining the scope of the Commission's program carriage statute of limitations at the *prima facie* stage of review. *See NFL Enterprises HDO,* 73 FR 65312, 65320, Nov. 3, 2008 (*prima facie* determination); *MASN II HDO,* 73 FR 65312, 65324–25, Nov. 3, 2008 (*prima facie* determination). We note that both of these cases were settled before a decision on the merits by an ALJ or the Commission. While Comcast claims that these cases were wrongly decided, we disagree and find no reason to ignore or reverse this precedent. In *NFL Enterprises HDO,* the contract at issue provided that the defendant had the contractual right to move the complainant to a premium sports tier if certain events occurred. After those events occurred, the defendant exercised this contractual right. The complainant filed a program carriage complaint alleging that the defendant's exercise of its contractual right to move the complainant to a premium sports tier, while at the same time carrying allegedly similar affiliated networks on a more widely distributed tier, was impermissibly discriminatory under Section 616(a)(3) of the Act and Section 76.1301(c) of the Commission's Rules. The complaint was filed within one year of the date of the retiering but more than one-year from the date the contract was executed. The Bureau rejected claims that the basis for the dispute was the contract and that the complaint should have been filed within one year from the date the contract was executed. The Bureau explained that the alleged act of discrimination that formed the basis for the complaint was the act of moving the complainant to a premium sports tier, not the terms of the contract. As The Tennis Channel did in this case, the complaint was filed within one year of the allegedly discriminatory act and within one year of the pre-filing notice. Thus, the Bureau held that the complaint was filed in accordance with the statute of limitations in Section 76.1302(f)(3).

17. In *MASN II HDO,* the contract at issue provided that the defendant would carry the complainant on certain specified systems but left it to the defendant's future discretion to choose to carry the complainant on systems not specified in the contract. After negotiations regarding carriage of the complainant on systems not specified in the contract reached an impasse, the complainant filed its program carriage complaint. The complainant alleged that

the defendant's refusal to exercise its discretion to carry the complainant on systems not specified in the contract, while at the same time carrying allegedly similar affiliated networks on those systems, was impermissibly discriminatory under Section 616(a)(3) of the Act and Section 76.1301(c) of the Commission's Rules. The complaint was filed within one year of the date when negotiations regarding carriage of the complainant on systems not specified in the contract reached an impasse, but more than one-year from the date the contract was executed. The Bureau rejected claims that the basis for the dispute was the contract and that the complaint should have been filed within one year from the date the contract was executed. The Bureau explained that the alleged act of discrimination that formed the basis for the complaint was the defendant's refusal to exercise its discretion to carry the complainant on systems not specified in the contract, not the terms of the contract. As The Tennis Channel did in this case, the complaint was filed within one year of the date of the allegedly discriminatory refusal to carry the complainant on systems not specified in the contract and within one year of the pre-filing notice. Thus, the Bureau held that the complaint was filed in accordance with the statute of limitations in Section 76.1302(f)(3).

18. As *NFL Enterprises HDO* and *MASN II HDO* demonstrate, Bureau precedent establishes that a complainant may have a timely program carriage claim in the middle of a contract term if the basis for the claim is an allegedly discriminatory decision made by the MVPD, such as tier placement, that the contract left to the MVPD's discretion. The exercise of such discretion is subject to the MVPD's obligations under the program carriage statute, which prohibits an MVPD from "discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage * * *." 47 U.S.C. 536(a)(3). Comcast claims that such an interpretation would create uncertainty and "open the floodgates to program carriage cases" because parties could bring complaints at any time, regardless of the existence of a non-discriminatory agreement, based on a demand to renegotiate the terms of the contract. We disagree because neither this case, nor the previous *NFL Enterprises HDO* and *MASN II HDO* cases, involves a request to renegotiate a term in an existing contract. Rather, all of these cases involve contracts which left a carriage decision to the defendant's discretion, and the gravamen of the complaints is whether the defendant's exercise of such discretion was consistent with its obligations under Section 616(a)(3) of the Act and Section 76.1301(c) of the Commission's Rules. Moreover, we note that the present case is the only program carriage complaint filed in the two years since the Bureau adopted *NFL Enterprises HDO* and *MASN II HDO,* thus refuting Comcast's claim that this interpretation of the statute of limitations will "open the floodgates to program carriage cases."

19. As the Bureau explained in *NFL Enterprises HDO,* "[w]hether or not Comcast had the right to [make a tiering decision] pursuant to a private agreement is not relevant to the issue of whether doing so violated Section 616 of the Act and the program carriage rules. Parties to a contract cannot insulate themselves from enforcement of the Act or our rules by agreeing to acts that violate the Act or rules." *See NFL Enterprises HDO,* 73 FR 65312, 65320, Nov. 3, 2008. Subsequent to the Bureau's decision in *NFL Enterprises HDO,* the Chief ALJ supported this view in denying a motion for a ruling on judicial estoppel and laches issues. *See NFL Enterprises LLC* v. *Comcast Cable Communications, LLC,* Memorandum Opinion and Order, FCC 09M–36 (Chief ALJ 2009), at para. 3 (denying motion that program carriage case should be dismissed because complainant was also pursuing a contract-based claim in state court, explaining that "NFL Enterprises seeks to vindicate its alleged private contractual rights in the New York litigation and its alleged federal and regulatory rights in this case * * *. The statutory and regulation issues in this case are separate and distinct from the contractual issues in the New York action."). As in *NFL Enterprises HDO* and *MASN II HDO,* we designate the present case for a hearing to determine whether Comcast exercised its discretion consistent with its obligations under the program carriage statute and rules when it declined to tier The Tennis Channel on a more widely distributed tier.

20. Under Comcast's interpretation of the program carriage statute of limitations, a programmer would be forever barred from bringing a discrimination claim unless the claim is brought within one year from the date the contract was executed. While Comcast notes that such an interpretation would provide certainty to MVPDs, it would also preclude programmers from bringing legitimate claims regarding allegedly discriminatory actions occurring more than one year after a contract was executed. Tennis Channel explains that fledgling networks often enter into contracts that provide the MVPD with tiering flexibility that allows the MVPD to increase the network's distribution as it develops. Under Comcast's interpretation, a programmer would be precluded from bringing a program carriage discrimination claim after the first year of the contract even if the MVPD refuses to provide the programmer with increased distribution in order to favor its own affiliated network.

21. Despite Comcast's claims to the contrary, this precedent is consistent with the decision of the Cable Services Bureau in *EchoStar* dismissing a program access case on procedural grounds. *See EchoStar Communications Corp.* v. *Fox/Liberty Networks, LLC,* 13 FCC Rcd 21841 (CSB 1998), *recon. denied, EchoStar Communications Corp.* v. *Fox/Liberty Networks, LLC,* 14 FCC Rcd 10480 (CSB 1999). The contract at issue in *EchoStar* specified the rate the complainant would pay for the defendant's programming. Over one year after the parties entered into the contract, however, the complainant sought to renegotiate the rate set forth in the contract. The Bureau found that the complaint was barred by the applicable statute of limitations, which requires that program access complaints be brought within one year of the date of execution of an affiliation agreement that allegedly violates the Commission's program access requirements. Thus, unlike the present case where the contract at issue does not specify the tier on which Comcast will carry The Tennis Channel and instead leaves tier placement to Comcast's discretion, *EchoStar* involved a complainant's attempt to renegotiate a rate set forth in the contract more than one year after the contract's execution date. Here, The Tennis Channel's complaint does not relate to any of the specific rates, terms, or conditions set forth in the parties' contract, but rather, Comcast's allegedly discriminatory tiering decision that occurred subsequent to the contract's execution. Citing *EchoStar,* the Commission later explained that "an offer to amend an existing contract that has been in effect for more than one year does not reopen the existing contract to complaints that the provisions thereof are discriminatory." *1998 Biennial Regulatory Review,* 64 FR 6565, Feb. 10, 1999. As discussed above, The Tennis Channel does not allege that the contract at issue contains discriminatory provisions and does not seek to amend its contract.

B. Discrimination Claim

1. Similarly Situated

22. We find that The Tennis Channel has provided evidence sufficient to demonstrate for the purpose of establishing a *prima facie* case of program carriage discrimination that it is similarly situated with Comcast-affiliated networks—the Golf Channel and Versus. (Comcast disputes that The Tennis Channel is similarly situated to the Golf Channel and Versus.) The Tennis Channel asserts that the relevant programming services are all nationally distributed sports television networks that generally compete in the same markets and have similar levels of viewer popularity. In particular, The Tennis Channel claims that it competes with Versus and the Golf Channel for the same viewers, advertisers, and programming. In support of its contention, The Tennis Channel points to the results of a survey purporting to show that the three networks attract affluent viewers that are predominantly male. In particular, the survey results indicate that the median household income for viewers of The Tennis Channel, Golf Channel, and Versus are $82,754, $71,786, and $65,353, respectively. Of viewer households with incomes above $100,000, the median income for The Tennis Channel and Golf Channel viewers is $148,700 and $144,500, respectively, which places those two networks in the top ten networks for median income among these affluent households. The survey results indicate that nearly 60 percent of The Tennis Channel viewers are male, and approximately 70 percent of Golf Channel and Versus viewers are male. With regard to competition for advertisers, The Tennis Channel has put forth evidence indicating that almost half of Versus's revenue from its top 30 advertisers derives from companies that either have purchased advertising on The Tennis Channel, or have evaluated formal proposals from The Tennis Channel during one of the past four "up front" periods in which advertisers solicit such proposals. Similarly, The Tennis Channel claims that 68 percent of the revenue that the Golf Channel earns from its top 30 advertisers originates from companies that have purchased advertising on The Tennis Channel or from companies that evaluated The Tennis Channel proposals during one of the past four "up front" periods. The Tennis Channel further asserts that it competes with Versus for tennis programming, and has shared rights to tennis tournaments with Versus.

23. In addition, The Tennis Channel has submitted evidence demonstrating that The Tennis Channel's ratings in its coverage area are generally comparable to those of both the Golf Channel and Versus. With regard to the "value proposition" of The Tennis Channel (*i.e.,* the rate charged by the network relative to the popularity of the network's programming), the network claims that it compares favorably to both Versus and the Golf Channel. The Tennis Channel asserts that, according to published data, the ratio between the license fee charged for the Golf Channel and its average all-day rating—the "price per point" of the network—is $3.13, and that Versus's price per point is $2.75. Although national ratings for The Tennis Channel are unavailable due to the network's limited distribution, The Tennis Channel claims that its average all-day household rating for the first nine months of 2009, in the local markets where it is rated, made its price per point approximately $1.46.

24. Similarly, The Tennis Channel contends that it surpasses Versus and the Golf Channel in terms of the quantity of event coverage and level of viewer engagement or participation in the covered sporting events. The Tennis Channel maintains that, in 2008, it offered more than 2,700 hours of worldwide event coverage, the vast majority of which was composed of exclusive events within the United States. By comparison, the Golf Channel and Versus offered only 2,400 and 1,350 hours of event coverage, respectively, that year. The Tennis Channel further asserts that it holds exclusive rights to telecast significant portions of all four of the major events in its field, the Grand Slams, and covers the world's top 70 tennis tournaments. By contrast, The Tennis Channel maintains, the Golf Channel does not offer live or first-run coverage of the most significant events in its field, the Majors. In addition, The Tennis Channel claims that ice hockey and the Tour de France comprise Versus's most popular programming, and that Versus covers only two games in the ice hockey championship series, the Stanley Cup Finals. The Tennis Channel puts forth the results of a recent study by an industry trade association indicating that tennis is "the fastest-growing sport in the country." The study purports to show that participation in tennis grew 43 percent between 2000 and 2008. Conversely, the study indicates that participation in golf dropped one percent, and participation in ice hockey, Versus's principally featured sport, declined 22 percent during the same period.

2. Differential Treatment

25. We also find that The Tennis Channel has put forth evidence sufficient to demonstrate for the purpose of establishing a *prima facie* case of program carriage discrimination that Comcast has treated The Tennis Channel differently "on the basis of affiliation or nonaffiliation" from Comcast's similarly situated, affiliated networks. (Comcast argues that its differential treatment of The Tennis Channel is justified by various legitimate and non-discriminatory reasons.) Comcast distributes Versus and the Golf Channel to virtually all of its subscribers on a comparatively inexpensive, widely distributed programming tier, and such subscribers need not pay an additional fee to receive those programming networks. By contrast, Comcast customers wishing to receive The Tennis Channel must subscribe to a premium tier and pay a monthly fee for the programming, in addition to fees they must pay to purchase an entry-level package of digital cable programming and acquire a digital cable box. According to The Tennis Channel, customers that subscribe to Comcast's SEP must pay approximately five dollars each month in addition to the fees they must pay for digital cable service. The SEP also includes other sports programming services. In Washington, DC, for example, this premium tier includes the Big Ten Network, Horse Racing Television, TV Games, the Fox College Sports regional channel, Fox Soccer Channel, GolTV, Speed Channel, NFL Red Zone, and CBS College Sports. According to The Tennis Channel, approximately ten percent of Comcast's customers subscribe to the SEP. The Tennis Channel claims that Comcast carries all of its affiliated programmers on broadly penetrated tiers, whereas Comcast's premium sports tier is occupied only by unaffiliated networks. The Tennis Channel has also provided evidence that Comcast affords more favorable channel positioning to sports networks with which it is affiliated. For example, in Washington, DC, Comcast carries Versus and the Golf Channel on low-numbered channels that are adjacent to EPSN and ESPN2, two popular sports programming networks. The Tennis Channel, however, is located at channel 735, adjacent to other networks that comprise Comcast's SEP.

3. Harm to Ability To Compete Fairly

26. The Tennis Channel has put forth evidence sufficient to demonstrate for the purpose of establishing a *prima facie* case of program carriage discrimination

that Comcast's unwillingness to distribute the network more broadly and its disparate treatment of the network has unreasonably restrained The Tennis Channel's ability to compete fairly. (Comcast disputes that The Tennis Channel has been unreasonably restrained in its ability to compete fairly.) The Tennis Channel claims that Comcast's failure to carry the network at the same level offered to Versus and the Golf Channel has impaired the network's overall distribution and subscription fee revenue, thereby depriving The Tennis Channel of license fees that can be used to improve the network. Because Comcast is the dominant cable operator in seven of the ten largest television markets, The Tennis Channel asserts that its refusal to expand The Tennis Channel's distribution is particularly detrimental to the network. Moreover, The Tennis Channel contends that the smaller viewership of Comcast's premium sports tier reduces the value of advertising on networks carried on that tier. The Tennis Channel claims that many national advertisers use a threshold number of subscribers, *e.g.,* 40 million subscribers, as a benchmark for assessing whether a network will be considered a viable competitor for national advertising purchases. Thus, The Tennis Channel asserts, networks with a distribution level below that threshold experience more difficulty attracting national advertisers. Indeed, The Tennis Channel claims that top cable advertisers have excluded the network as a competitor for national advertising contracts due to its narrow distribution. By contrast, The Tennis Channel claims, some of those national advertisers have expended significant resources to place ads on both the Golf Channel and Versus.

27. In addition, The Tennis Channel asserts that Comcast's disparate treatment has impaired the network's ability to compete for programming, and points to several examples where the network either failed to win programming rights or was forced to make concessions in order to obtain such rights. Finally, The Tennis Channel claims that Comcast's refusal to expand its distribution has deprived the network of economies of scale. The Tennis Channel points out that, because a cable network's expenses are fixed irrespective of the number of subscribers, broader distribution of the network increases revenues without increasing costs. Thus, it claims, the operating costs are substantially less for a widely distributed network than for one whose distribution is more limited. As a consequence of its inability to realize economies of scale, The Tennis Channel asserts that it has been forced to limit marketing, production, and programming expenses, and was unable to renew agreements for certain smaller tournaments in 2010.

4. Referral to ALJ or ADR

28. Based on the foregoing, we find it appropriate to designate the captioned complaint on the issues specified below for a hearing before an ALJ. The question of whether The Tennis Channel has put forth evidence sufficient to warrant designation of this matter for hearing is not an issue before the Presiding Judge. As required by the Commission's Rules, to the extent Comcast seeks Commission review of our decision on this issue, such review, if any, shall be deferred until exceptions to the Initial Decision in this proceeding are filed. *See* 47 CFR 1.115(e)(3). Despite our *prima facie* determination, the Presiding Judge will conduct a *de novo* examination of all relevant evidence after developing a full and complete record. Pursuant to Section 76.7(g)(2) of the Commission's Rules, each party will have ten days following release of this *Order* to notify the Chief, Enforcement Bureau and Chief ALJ, in writing, of its election to resolve this dispute through ADR. The hearing proceeding will be suspended during this ten-day period. In the event that both parties elect ADR, the hearing proceeding will remain suspended, and the parties shall update the Chief, Enforcement Bureau and Chief ALJ monthly, in writing, on the status of the ADR process. If both parties elect ADR but fail to reach a settlement, the parties shall promptly notify the Chief, Enforcement Bureau and Chief ALJ in writing, and the proceeding before the ALJ will commence upon the receipt of such notification. If both parties elect ADR and reach a settlement, the parties shall promptly notify the Chief, Enforcement Bureau, Chief ALJ, and Chief, Media Bureau in writing, and the hearing designation will be terminated upon the Media Bureau's order dismissing the complaint becoming a final order. If one or both parties do not elect ADR, then the hearing proceeding will commence the day after the ten-day period has lapsed.

29. Notwithstanding our determination that The Tennis Channel has made out a *prima facie* case of program carriage discrimination by Comcast, we direct the Presiding Judge to develop a full and complete record in the instant hearing proceeding and to conduct a *de novo* examination of all relevant evidence in order to make an Initial Decision on each of the outstanding factual and legal issues. In addition, we direct the Presiding Judge to make all reasonable efforts to issue his Initial Decision on an expedited basis. In furtherance of this goal, we encourage the Presiding Judge to place limitations on the discovery tools available to the parties.

30. Pursuant to Section 76.10(c)(2) of the Commission's Rules, a party aggrieved by the ALJ's decision on the merits may appeal such decision directly to the Commission in accordance with Sections 1.276(a) and 1.277(a) through (c) of the Commission's Rules. 47 CFR 76.10(c)(2). Unless the Commission grants a stay of the ALJ's decision, such decision will become effective upon release and will remain in effect pending appeal. However, if the ALJ's decision would require a defendant MVPD to delete existing programming from its system to accommodate carriage, the order for carriage will not become effective unless and until the decision of the ALJ is upheld by the Commission. 47 CFR 76.1302(g)(1).

IV. Ordering Clauses

31. Accordingly, *it is ordered,* that pursuant to Section 409(a) of the Communications Act of 1934, as amended, 47 U.S.C. 409(a), and Sections 76.7(g) and 1.221 of the Commission's Rules, 47 CFR 76.7(g), 1.221, the captioned program carriage complaint filed by The Tennis Channel, Inc. against Comcast Cable Communications, LLC, is *Designated For Hearing* at a date and place to be specified in a subsequent order by an Administrative Law Judge upon the following issues:

(a) To determine whether Comcast has engaged in conduct the effect of which is to unreasonably restrain the ability of The Tennis Channel to compete fairly by discriminating in video programming distribution on the basis of the complainant's affiliation or non-affiliation in the selection, terms, or conditions for carriage of video programming provided by The Tennis Channel, in violation of Section 616(a)(3) of the Act and/or Section 76.1301(c) of the Commission's Rules; and

(b) In light of the evidence adduced pursuant to the foregoing issue, to determine whether Comcast should be required to carry The Tennis Channel on its cable systems on a specific tier or to a specific number or percentage of Comcast subscribers and, if so, the price, terms, and conditions thereof; and/or whether Comcast should be required to implement such other carriage-related remedial measures as are deemed appropriate; and

(c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether a forfeiture should be imposed on Comcast.

32. If the ALJ requires Comcast to carry The Tennis Channel on its cable systems on a specific tier or to a specific number or percentage of subscribers, the ALJ shall determine whether such remedy would "require [Comcast] to delete existing programming from its system to accommodate carriage of" The Tennis Channel. 47 CFR 76.1302(g)(1). If the ALJ determines that this remedy would require Comcast to delete existing programming, then this remedy will be treated as Section 76.1302(g)(1) treats "mandatory carriage," thus delaying the effectiveness of this remedy unless and until the decision of the ALJ is upheld by the Commission. In that event, if the Commission upholds the remedy ordered by the ALJ in its entirety, Comcast will be required to carry The Tennis Channel's programming for an additional period equal to the time elapsed between the ALJ's decision and the Commission's ruling, on the terms and conditions approved by the Commission.

33. *It is further ordered,* that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), The Tennis Channel and Comcast *Shall Each File* with the Chief, Enforcement Bureau and Chief ALJ, by October 15, 2010, its respective elections as to whether it wishes to proceed to Alternative Dispute Resolution. The hearing proceeding *Is Hereby Suspended* during this time. If one or both of the parties do not elect ADR, then the hearing proceeding will commence on October 18, 2010. If both parties elect ADR, the hearing proceeding will remain suspended, and The Tennis Channel and Comcast shall update the Chief, Enforcement Bureau and Chief ALJ monthly on the status of the ADR process. Such updates shall be provided in writing and shall reference the MB docket number and file number assigned to this proceeding. If both parties elect ADR but fail to reach a settlement, the parties shall promptly notify the Chief, Enforcement Bureau and Chief ALJ in writing, and the proceeding before the ALJ will commence upon the receipt of such notification by the Commission. If both parties elect ADR and reach a settlement, the parties shall promptly notify the Chief, Enforcement Bureau, Chief ALJ, and Chief, Media Bureau in writing, and the hearing will be terminated upon the Media Bureau's order dismissing the complaint becoming a final order.

34. *It is further ordered* that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), in order to avail itself of the opportunity to be heard, The Tennis Channel and Comcast, in person or by their attorneys, *Shall Each File* with the Commission, by October 22, 2010, a written appearance stating that it will appear on the date fixed for hearing and present evidence on the issues specified herein, provided that, if both parties elect ADR, each party shall file such written appearance within five days after notifying the Chief, Enforcement Bureau and Chief ALJ that it has failed to settle the dispute through ADR. In light of the expedited basis of this hearing proceeding, the deadline for filing written appearances set forth in Section 1.221(c) of the Commission's Rules, 47 CFR 1.221(c), is waived and replaced with the deadlines set forth above. In addition, Section 1.221(f) of the Commission's Rules, 47 CFR 1.221(f), provides that a "fee must accompany each written appearance filed with the Commission in certain cases designated for hearing." However, neither the Act nor our rules specify a fee for hearings involving program carriage complaints. *See* 47 CFR 1.1104; *see also* 47 U.S.C. 158. Accordingly, neither The Tennis Channel nor Comcast is required to pay a fee in connection with the filing of their respective appearances in this proceeding.

35. *It is further ordered* that, if The Tennis Channel fails to file a written appearance by the deadline specified above, or fails to file prior to the deadline either a petition to dismiss the above-captioned proceeding without prejudice, or a petition to accept, for good cause shown, a written appearance beyond such deadline, the Administrative Law Judge *Shall Dismiss* the above-captioned proceeding with prejudice for failure to prosecute.

36. *It is further ordered* that, if Comcast fails to file a written appearance by the deadline specified above, or fails to file prior to the deadline a petition to accept, for good cause shown, a written appearance beyond such deadline, its opportunity to present evidence at hearing will be deemed to have been waived. If the hearing is so waived, the Presiding Judge shall expeditiously terminate this proceeding and certify to the Commission the captioned complaint for resolution based on the existing record.

37. *It is further ordered* that in addition to the resolution of the issues (a) through (c) in paragraph 18 above, the Presiding Judge shall also determine, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an Order for Forfeiture shall be issued against Comcast for each violation or each day of a continuing violation, except that the amount issued for any continuing violation shall not exceed the amount specified in Section 503(b)(2)(C), 47 U.S.C. 503(b)(2)(C), for any single act or failure to act.

38. *It is further ordered* that for the purposes of issuing a forfeiture, this document constitutes notice, as required by Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. 503.

39. *It is further ordered* that a copy of this *Order* shall be sent by Certified Mail—Return Receipt Requested and regular first class mail to (i) The Tennis Channel, 2850 Ocean Park Boulevard, Suite 150, Santa Monica, CA 90405, with a copy (including a copy via e-mail) to Stephen A. Weiswasser, Esq., Covington and Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004–2401 (*sweiswasser@cov.com*); and (ii) Comcast Cable Communications, LLC, One Comcast Center, Philadelphia, PA 19103, with a copy (including a copy via e-mail) to David P. Murray, Esq., Willkie Farr & Gallagher LLP, 1875 K Street, NW., Washington, DC 20006 (*dmurray@willkie.com*).

40. *It is further ordered* that the Chief, Enforcement Bureau, is made a party to this proceeding without the need to file a written appearance, and she shall have the authority to determine the extent of her participation therein.

41. *It is further ordered* that a copy of this *order* or a summary thereof shall be published in the **Federal Register**.

Federal Communications Commission.

Nancy Murphy,

Associate Chief, Media Bureau.

[FR Doc. 2010–26766 Filed 10–21–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, October 19, 2010, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of Previous Board of Directors' Meetings

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Restoration Plan and Notice of Proposed Rulemaking on Assessment Rates, Dividends and the Designated Reserve Ratio.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: October 12, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–26813 Filed 10–20–10; 11:15 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, October 19, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–26435 Filed 10–21–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–15]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2010 first round review cycle under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before December 6, 2010.

ADDRESSES: Bank members selected for the 2010 first round review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at *hmgcommunitysupportprogram@fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Rona Richardson, Office Assistant, Housing Mission and Goals, Federal Housing Finance Agency, by telephone at 202–408–2945, by electronic mail at *Rona.Richardson@FHFA.gov,* or by hard-copy mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 1290.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to FHFA by the December 6, 2010 deadline prescribed in this notice. 12 CFR 1290.2(b)(1)(ii) and (c). On or before November 5, 2010, each Bank will notify the members in its district that have been selected for the 2010 first round community support review cycle that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR 1290.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on the FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2010 first round community support review cycle:

Federal Home Loan Bank of Boston—District 1

New England Bank	Enfield	Connecticut.
Litchfield Bancorp	Litchfield	Connecticut.
Milford Bank	Milford	Connecticut.
PrimeBank	Orange	Connecticut.
The National Iron Bank	Salisbury	Connecticut.
Mechanics Savings Bank	Auburn	Maine.
Oxford Federal Credit Union	Mexico	Maine.
Adams Co-operative Bank	Adams	Massachusetts.
Beverly Co-operative	Beverly	Massachusetts.
Wainwright Bank & Trust	Boston	Massachusetts.
Chelsea-Provident Co-operative Bank	Chelsea	Massachusetts.
East Boston SB	East Boston	Massachusetts.
Fall River Five Cent	Fall River	Massachusetts.
The First National Bank of Ipswich	Ipswich	Massachusetts.
Century Bank & Trust Company	Medford	Massachusetts.
Needham Bank	Needham	Massachusetts.
Hoosac Bank	North Adams	Massachusetts.
North Brookfield Savings Bank	North Brookfield	Massachusetts.
Bank of Easton, A Co-operative Bank	North Easton	Massachusetts.
Cape Cod Five Cents Savings Bank	Harwich Port	Massachusetts.
Rockland Trust Company	Rockland	Maine.
UniBank for Savings	Whitinsville	Massachusetts.
Williamstown Savings Bank	Williamstown	Massachusetts.
St. Mary's Bank	Manchester	New Hampshire.
Community Guaranty Savings Bank	Plymouth	New Hampshire.
Bank Rhode Island	Providence	Rhode Island.
Union Federal Savings Bank	North Providence	Rhode Island.

Federal Home Loan Bank of New York—District 2

Provident Bank	Jersey City	New Jersey.
Atlantic Stewardship Bank	Midland Park	New Jersey.
City National Bank of New Jersey	Newark	New Jersey.
First Niagara Bank, National Association	Buffalo	New York.
Chemung Canal Trust Company	Elmira	New York.
National Bank of New York City	Flushing	New York.
Rondout Savings Bank	Kingston	New York.
State Bank of Long Island	New Hyde Park	New York.
Eastbank, National Association	New York City	New York.
Rhinebeck Savings Bank	Rhinebeck	New York.
Tioga State Bank	Spencer	New York.
New York Community Bank	Westbury	New York.
Banco Santander Puerto Rico	Hato Rey	Puerto Rico.

Federal Home Loan Bank of Pittsburgh—District 3

County Bank	Rehoboth Beach	Delaware.
Chelten Hills Savings Bank	Abington	Pennsylvania.
The Kishacoquillas Valley NB	Belleville	Pennsylvania.
Firs Trust Bank	Conshohocken	Pennsylvania.
The Farmers National Bank of Emlenton	Emlenton	Pennsylvania.
First National Bank of Pennsylvania	Hermitage	Pennsylvania.
Wayne Bank	Honesdale	Pennsylvania.
AmeriServ Financial Bank	Johnstown	Pennsylvania.
Luzerne Bank	Luzerne	Pennsylvania.
Marion Center Bank	Marion Center	Pennsylvania.
The First National Bank of Port Allegany	Port Allegany	Pennsylvania.
Community First Bank	Reynoldsville	Pennsylvania.
Farmers Building and Savings Bank	Rochester	Pennsylvania.
Mountain Valley Bank, NA	Elkins	West Virginia.
The Harrison County Bank	Lost Creek	West Virginia.
Union Bank, Inc.	Middlebourne	West Virginia.
Grant County Bank	Petersburg	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Peoples Bank of Greensboro	Greensboro	Alabama.
Cheaha Bank	Oxford	Alabama.
THE COMMERCIAL BANK OF OZARK	Ozark	Alabama.
Metro Bank	Pell City	Alabama.

Alabama Trust Bank, National Association	Sylacauga	Alabama.
The Farmers & Merchants Bank	Waterloo	Alabama.
The Citizens Bank of Winfield	Winfield	Alabama.
Adams National Bank	Washington	District of Columbia.
Drummond Community Bank	Chiefland	Florida.
The Bank of Miami, N.A.	Coral Gables	Florida.
First National Bank of Pasco	Dade City	Florida.
BankFIRST	Eustis	Florida.
Community Bank of Florida, Inc.	Homestead	Florida.
Fidelity Bank of Florida	Merritt Island	Florida.
Coconut Grove Bank	Miami	Florida.
Peoples National Bank	Niceville	Florida.
Security Bank, National Association	North Lauderdale	Florida.
Enterprise Bank of Florida	North Palm Beach	Florida.
Prosperity Bank	St. Augustine	Florida.
Premier Bank	Tallahassee	Florida.
First National Bank of Wauchula	Wauchula	Florida.
Alma Exchange Bank and Trust	Alma	Georgia.
First National Bank South	Alma	Georgia.
Citizens Bank of Americus	Americus	Georgia.
Rabun County Bank	Clayton	Georgia.
Bank of Dudley	Dudley	Georgia.
First National Bank of Griffin	Griffin	Georgia.
McIntosh State Bank	Jackson	Georgia.
Queensborough National Bank & Trust Company	Louisville	Georgia.
Bank of Madison	Madison	Georgia.
Exchange Bank	Milledgeville	Georgia.
Ameris Bank	Moultrie	Georgia.
Fidelity Bank	Norcross	Georgia.
Bryan Bank and Trust	Richmond Hill	Georgia.
Northwest Georgia Bank	Ringgold	Georgia.
West Central Georgia Bank	Thomaston	Georgia.
Carrollton Bank	Baltimore	Maryland.
Frederick County Bank	Frederick	Maryland.
Glen Burnie Mutual Savings Bank	Glen Burnie	Maryland.
Hebron Savings Bank	Hebron	Maryland.
First Financial of Maryland Federal Credit Union	Lutherville	Maryland.
Regal Bank & Trust	Owings Mills	Maryland.
The Queenstown Bank of Maryland	Queenstown	Maryland.
Blue Ridge Savings Bank, Inc.	Asheville	North Carolina.
Yadkin Valley Bank and Trust Company	Elkin	North Carolina.
The Fidelity Bank	Fuquay-varina	North Carolina.
Bank of Granite	Granite Falls	North Carolina.
Sound Banking Company	Morehead City	North Carolina.
Morganton Federal Savings & Loan Association	Morganton	North Carolina.
Peoples Bank	Newton	North Carolina.
First Carolina State Bank	Rocky Mount	North Carolina.
Wake Forest Federal Savings & Loan Association	Wake Forest	North Carolina.
First Federal Savings & Loan Association	Charleston	South Carolina.
Horry County State Bank	Loris	South Carolina.
Crescent Bank	Myrtle Beach	South Carolina.
Virginia National Bank	Charlottesville	Virginia.
Bank of Hampton Roads	Chesapeake	Virginia.
The Old Point National Bank of Phoebus	Hampton	Virginia.
Grayson National Bank	Independence	Virginia.
Chesapeake Bank	Kilmarnock	Virginia.
Village Bank	Midlothian	Virginia.
BayPort Credit Union	Newport News	Virginia.
Central Virginia Bank	Powhatan	Virginia.
Federal Home Loan Bank of Cincinnati—District 5		
Citizens Deposit Bank of Arlington, Inc.	Arlington	Kentucky.
Peoples Bank and Trust Company of Madison Co	Berea	Kentucky.
Deposit Bank of Carlisle	Carlisle	Kentucky.
The Farmers National Bank of Danville	Danville	Kentucky.
Dixon Bank	Dixon	Kentucky.
First Citizens Bank	Elizabethtown	Kentucky.
Fort Knox Federal Credit Union	Fort Knox	Kentucky.
Farmers Bank and Capital Trust	Frankfort	Kentucky.
Franklin Bank and Trust Company	Franklin	Kentucky.
The Bank of Henderson, Inc.	Henderson	Kentucky.
Century Bank of Kentucky	Lawrenceburg	Kentucky.
Kentucky Telco Federal Credit Union	Louisville	Kentucky.
King Southern Bank	Louisville	Kentucky.
Jackson County Bank	McKee	Kentucky.

The Farmers Bank of Milton	Milton	Kentucky.
Peoples Bank & Trust	Owenton	Kentucky.
The Springfield State Bank	Springfield	Kentucky.
South Central Bank of Monroe County, Inc.	Tompkinsville	Kentucky.
United Southern Bank	Trenton	Kentucky.
Citizens Deposit Bank & Trust	Vanceburg	Kentucky.
The Apple Creek Banking CO	Apple Creek	Ohio.
Sharefax Credit Union, Inc.	Batavia	Ohio.
The First National Bank of Bellevue	Bellevue	Ohio.
Monitor Bank	Big Prairie	Ohio.
Cottage Savings Bank	Cincinnati	Ohio.
The Huntington National Bank	Columbus	Ohio.
The Community Bank	Crooksville	Ohio.
Citizens National Bank of Southwestern Ohio	Dayton	Ohio.
Dover-phyla Federal Credit Union	Dover	Ohio.
First National Community Bank	East Liverpool	Ohio.
The Bankers Guarantee Title & Trust Company	Fairlawn	Ohio.
The Peoples Bank Inc	Gambier	Ohio.
The Genoa Banking Company	Genoa	Ohio.
Metamora State Bank	Metamora	Ohio.
Consumers National Bank	Minerva	Ohio.
The Henry County Bank	Napoleon	Ohio.
Home FS & LA of Niles	Niles	Ohio.
Community One Credit Union of Ohio	North Canton	Ohio.
The Osgood State Bank	Osgood	Ohio.
The Ottoville Bank Company	Ottoville	Ohio.
Westfield Bank, FSB	Westfield Center	Ohio.
Bank of Cleveland	Cleveland	Tennessee.
Citizens Tri-County Bank	Dunlap	Tennessee.
Citizens Bank	Elizabethton	Tennessee.
Andrew Johnson Bank	Greeneville	Tennessee.
Farmers Bank	Parsons	Tennessee.
First National Bank of Pulaski	Pulaski	Tennessee.
First Century Bank	Tazewell	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

The Bath State Bank	Bath	Indiana.
First Bank of Berne	Berne	Indiana.
The Bippus State Bank	Bippus	Indiana.
Monroe County Bank	Bloomington	Indiana.
The Farmers and Merchants Bank	Boswell	Indiana.
The Farmers State Bank—Brookston	Brookston	Indiana.
The Fountain Trust Company	Covington	Indiana.
DeMotte State Bank	Demotte	Indiana.
The Peoples State Bank—Ellettsville	Ellettsville	Indiana.
Integra Bank National Association	Evansville	Indiana.
Bank of Geneva	Geneva	Indiana.
MainSource Bank	Greensburg	Indiana.
Salin Bank and Trust Company	Indianapolis	Indiana.
The National Bank of Indianapolis	Indianapolis	Indiana.
Kentland Bank	Kentland	Indiana.
Community State Bank	Royal Center	Indiana.
The Morris Plan CO of Terre Haute	Terre Haute	Indiana.
Lake City Bank	Warsaw	Indiana.
Community State Bank	Avila	Indiana.
Alden State Bank	Alden	Michigan.
Midwest Financial Credit Union	Ann Arbor	Michigan.
First National Bank of Michigan	East Lansing	Michigan.
The State Bank—Fenton	Fenton	Michigan.
Dort Federal Credit Union	Flint	Michigan.
First Bank, Upper Michigan	Gladstone	Michigan.
United Bank of Michigan	Grand Rapids	Michigan.
Lansing Automakers Federal Credit Union	Lansing	Michigan.
Farmers State Bank of Munith	Munith	Michigan.
Royal Oak Community Credit Union	Royal Oak	Michigan.

Federal Home Loan Bank of Chicago—District 7

Anchor State Bank	Anchor	Illinois.
Germantown Trust & Savings Bank	Breese	Illinois.
The Bank of Carbondale	Carbondale	Illinois.
Highland Community Bank	Chicago	Illinois.
Home State Bank, National Association	Crystal Lake	Illinois.
Farmers State Bank of Danforth	Danforth	Illinois.
Durand State Bank	Durand	Illinois.

First Community Bank	Elgin	Illinois.
Standard Bank and Trust Company	Evergreen Park	Illinois.
First Eagle Bank	Hanover Park	Illinois.
Bank of Calhoun County	Hardin	Illinois.
The First National Bank of Lacon	Lacon	Illinois.
The Farmers Bank of Liberty	Liberty	Illinois.
Banterra Bank	Marion	Illinois.
Maroa Forsyth Community Bank	Maroa	Illinois.
First Mid-Illinois Bank & Trust, N.A.	Mattoon	Illinois.
First State Bank	Mendota	Illinois.
Citizens State Bank Of Milford	Milford	Illinois.
BankOrion	Orion	Illinois.
The Citizens National Bank of Paris	Paris	Illinois.
South Side Trust & Savings Bank of Peoria	Peoria	Illinois.
Bank of Pontiac	Pontiac	Illinois.
Princeville State Bank	Princeville	Illinois.
The Farmers National Bank of Prophet	Prophetstown	Illinois.
Marion County Savings Bank	Salem	Illinois.
Bank of Springfield	Springfield	Illinois.
St. Charles Bank and Trust	St. Charles	Illinois.
First Community State Bank	Staunton	Illinois.
First National Bank in Taylorville	Taylorville	Illinois.
First National Bank of Waterloo	Waterloo	Illinois.
Williamsville State Bank & Trust	Williamsville	Illinois.
The Baraboo National Bank	Baraboo	Wisconsin.
Union Bank of Blair	Blair	Wisconsin.
Great Midwest Bank, S.S.B.	Brookfield	Wisconsin.
Bank North	Crivitz	Wisconsin.
First National Bank of Eagle River	Eagle River	Wisconsin.
Citizens Community Federal	Eau Claire	Wisconsin.
Royal Bank	Elroy	Wisconsin.
Oak Bank	Fitchburg	Wisconsin.
State Bank Of Florence	Florence	Wisconsin.
Bank of Galesville	Galesville	Wisconsin.
First National Bank of Hartford	Hartford	Wisconsin.
Bank of Wisconsin	Kenosha	Wisconsin.
Coulee Bank	La Crosse	Wisconsin.
Citizens State Bank of Loyal	Loyal	Wisconsin.
Bank of Luxemburg	Luxemburg	Wisconsin.
First Business Bank	Madison	Wisconsin.
Columbia Savings and Loan Association	Milwaukee	Wisconsin.
Citizens Bank of Mukwonago	Mukwonago	Wisconsin.
First State Bank	New London	Wisconsin.
First Bank Financial Centre	Oconomowoc	Wisconsin.
River Valley State Bank	Rothschild	Wisconsin.
River Bank	Stoddard	Wisconsin.
Waldo State Bank	Waldo	Wisconsin.
Farmers & Merchants State Bank	Waterloo	Wisconsin.
Waukesha State Bank	Waukesha	Wisconsin.
Marathon Savings Bank	Wausau	Wisconsin.
John O. Melby & Co. Bank	Whitehall	Wisconsin.
Chippewa Valley Bank	Winter	Wisconsin.
Woodford State Bank	Woodford	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

City State Bank	Central City	Iowa.
Iowa State Bank, Des Moines, Iowa	Des Moines	Iowa.
Peoples Savings Bank	Elma	Iowa.
Lee County Bank & Trust, N.A.	Fort Madison	Iowa.
Grinnell State Bank	Grinnell	Iowa.
Security State Bank	Independence	Iowa.
Community First Bank	Keosauqua	Iowa.
Pleasantville State Bank	Pleasantville	Iowa.
Northeast Security Bank	Sumner	Iowa.
Farmers & Merchants Savings Bank	Waukon	Iowa.
Earlham Savings Bank	West Des Moines	Iowa.
Liberty Bank, FSB	West Des Moines	Iowa.
Midwest Heritage Bank, F.S.B.	West Des Moines	Iowa.
First Trust and Savings Bank	Wheatland	Iowa.
North American State Bank	Belgrade	Minnesota.
Bremer Bank, National Association	Brainerd	Minnesota.
First Security Bank—Canby	Canby	Minnesota.
Republic Bank, Inc.	Duluth	Minnesota.
Beacon Bank	Shorewood	Minnesota.
Bremer Bank, National Association	International Falls	Minnesota.

Security State Bank of Lewiston	Lewiston	Minnesota.
Minnwest Bank Luverne	Luverne	Minnesota.
Security State Bank of Marine	Marine on St. Croix	Minnesota.
Franklin National Bank of Minneapolis	Minneapolis	Minnesota.
First Minnetonka City Bank	Minnetonka	Minnesota.
Minnwest Bank Central	Montevideo	Minnesota.
Lake Region Bank	New London	Minnesota.
United Community Bank	Perham	Minnesota.
Farmers & Merchants State Bank of Pierz	Pierz	Minnesota.
Pine Island Bank	Pine Island	Minnesota.
First Bank &Trust, National Association	Pipestone	Minnesota.
State Bank of Richmond	Richmond	Minnesota.
Minnesota First Credit and Savings	Rochester	Minnesota.
Pine Country Bank	Little Falls	Minnesota.
Liberty Savings Bank, FSB	Saint Cloud	Minnesota.
Capital Bank	Saint Paul	Minnesota.
Bremer Bank, National Association	South St. Paul	Minnesota.
Farmers & Merchants State Bank of Springfield	Springfield	Minnesota.
Central Bank	Stillwater	Minnesota.
Northern State Bank	Thief River Falls	Minnesota.
Community Bank Mankato	Vernon Center	Minnesota.
Paragon Bank	Wells	Minnesota.
State Bank of Wheaton	Wheaton	Minnesota.
Bremer Bank, National Association	Willmar	Minnesota.
Winona National Bank	Winona	Minnesota.
Bank of Advance	Advance	Missouri.
First Community Bank, Missouri	Poplar Bluff	Missouri.
Carroll County Savings & Loan Association	Carrollton	Missouri.
Enterprise Bank and Trust	Clayton	Missouri.
First Midwest Bank of Dexter	Dexter	Missouri.
F&C Bank	Holden	Missouri.
Midwest Independent Bank	Jefferson City	Missouri.
Bank Midwest, National Association	Kansas City	Missouri.
Union Bank	Kansas City	Missouri.
First Community Bank	Lee's Summit	Missouri.
Alliant Bank	Madison	Missouri.
Citizens National Bank of Greater St. Louis	Maplewood	Missouri.
Martinsburg Bank and Trust	Mexico	Missouri.
Central Bank of Lake of the Ozarks	Osage Beach	Missouri.
First Midwest Bank of Poplar Bluff	Poplar Bluff	Missouri.
Preferred Bank	Rothville	Missouri.
Anheuser-Busch Employees' Credit Union	St. Louis	Missouri.
Jefferson Bank & Trust Co.	St. Louis	Missouri.
Neighbors Credit Union	St. Louis	Missouri.
First Community National Bank	Steelville	Missouri.
Bank of Sullivan	Sullivan	Missouri.
Bank of Crocker	Waynesville	Missouri.
West Plains Bank and Trust Company	West Plains	Missouri.
Bank of Weston	Weston	Missouri.
Bank of North Dakota	Bismarck	North Dakota.
American Bank Center	Dickinson	North Dakota.
Choice Financial Group	Grafton	North Dakota.
Security First Bank of North Dakota	New Salem	North Dakota.
American State Bank & Trust Company of Williston	Williston	North Dakota.
First National Bank	Fort Pierre	South Dakota.
The First National Bank in Sioux Falls	Sioux Falls	South Dakota.

Federal Home Loan Bank of Dallas—District 9

The First National Bank of Berryville	Berryville	Arkansas.
FNB of Izard County	Calico Rock	Arkansas.
Arkansas County Bank	De Witt	Arkansas.
Bank of England	England	Arkansas.
First National Bank in Green Forest	Green Forest	Arkansas.
Helena National Bank	Helena	Arkansas.
Liberty Bank of Arkansas	Jonesboro	Arkansas.
Bank of Little Rock	Little Rock	Arkansas.
First Community Bank of Eastern Arkansas	Marion	Arkansas.
Commercial Bank and Trust	Monticello	Arkansas.
First National Bank And Trust Co. of Mountain Home	Mountain Home	Arkansas.
Bank of Prescott	Prescott	Arkansas.
Riverside Bank	Sparkman	Arkansas.
First National Bank, Bienville Parish	Arcadia	Louisiana.
Citizens National Bk. of Bossier City	Bossier City	Louisiana.
Guaranty Bank & Trust Company of Delhi	Delhi	Louisiana.
Catahoula-LaSalle Bank	Jonesville	Louisiana.

Progressive National Bank of Desoto Parish	Mansfield	Louisiana.
Bank of Maringuoin	Maringuoin	Louisiana.
Louisiana Corporate Credit Union	Metairie	Louisiana.
Whitney National Bank	New Orleans	Louisiana.
Guaranty Bank & Trust Co.	New Roads	Louisiana.
Tensas State Bank	Newellton	Louisiana.
Patterson State Bank	Patterson	Louisiana.
Iberville Bank	Plaquemine	Louisiana.
Rayne State Bank & Trust Co.	Rayne	Louisiana.
Teche Bank & Trust Co.	St. Martinville	Louisiana.
Bank of Sunset & Trust Co.	Sunset	Louisiana.
Washington State Bank	Washington	Louisiana.
Centric Federal Credit Union	West Monroe	Louisiana.
Community Bank, Coast	Biloxi	Mississippi.
Citizens Bank	Columbia	Mississippi.
Jefferson Bank	Fayette	Mississippi.
First Commercial Bank	Jackson	Mississippi.
Bank of Kilmichael	Kilmichael	Mississippi.
Peoples Bank	Mendenhall	Mississippi.
Bank of Morton	Morton	Mississippi.
Merchants & Planters Bank	Raymond	Mississippi.
Richton Bank & Trust Company	Richton	Mississippi.
First State Bank	Waynesboro	Mississippi.
Main Bank	Albuquerque	New Mexico.
Sunrise Bank of Albuquerque	Albuquerque	New Mexico.
Farmers & Stockmens Bank of Clayton	Clayton	New Mexico.
Valley National Bank	Espanola	New Mexico.
Lea County State Bank	Hobbs	New Mexico.
Bank of the Rio Grande N.A.	Las Cruces	New Mexico.
Western Heritage Bank	Las Cruces	New Mexico.
Bank of the Southwest	Roswell	New Mexico.
City Bank New Mexico	Ruidoso	New Mexico.
Bank of Texas	Austin	Texas.
Ballinger National Bank	Ballinger	Texas.
Bloomburg State Bank	Bloomburg	Texas.
First Bank & Trust-Childress	Childress	Texas.
Southwest Bank	Fort Worth	Texas.
HomeTown Bank, NA	Galveston	Texas.
Gruver State Bank	Gruver	Texas.
Hull State Bank	Hull	Texas.
Industry State Bank	Industry	Texas.
Synergy Bank, S.S.B.	McKinney	Texas.
San Antonio National Bank	Refugio	Texas.
Red River Employees	Texarkana	Texas.
Citizens National Bank of Texas	Waxahachie	Texas.
Vintage Bank	Waxahachie	Texas.
White Oak State Bank	White Oak	Texas.
American Bank of Commerce	Wolfforth	Texas.
Citizens State Bank	Woodville	Texas.

Federal Home Loan Bank of Topeka—District 10

First Southwest Bank	Alamosa	Colorado.
Fitzsimons Federal Credit Union	Aurora	Colorado.
Boulder Municipal Employees FCU	Boulder	Colorado.
Boulder Valley Credit Union	Boulder	Colorado.
Flatirons Bank	Boulder	Colorado.
5Star Bank	Colorado Springs	Colorado.
Firstbank of El Paso County	Colorado Springs	Colorado.
Bank of Denver	Denver	Colorado.
First Western Trust Bank	Denver	Colorado.
FirstBank of Cherry Creek—Denver, CO	Denver	Colorado.
FirstBank of Denver—Denver, CO	Denver	Colorado.
Westerra Credit Union	Denver	Colorado.
Millennium Bank	Edwards	Colorado.
Trust Company of America	Englewood	Colorado.
Farmers State Bank of Fort Morgan	Fort Morgan	Colorado.
Grand Valley Bank	Grand Junction	Colorado.
Bellco First Federal Credit Union—Greenwood	Greenwood Village	Colorado.
First State Bank of Colorado	Hotchkiss	Colorado.
The Colorado B&T of La Junta	La Junta	Colorado.
FirstBank of Colorado—Lakewood, CO	Lakewood	Colorado.
FirstBank of South Jeffco—Littleton, CO	Lakewood	Colorado.
FirstBank of Longmont—Longmont, CO	Longmont	Colorado.
Mile High Banks	Longmont	Colorado.
Citizens Bank of Pagosa Springs—Pagosa Springs	Pagosa Springs	Colorado.

FirstBank of Adams County	Thornton	Colorado.
North Valley Bank	Thornton	Colorado.
First National Bank in Trinidad	Trinidad	Colorado.
Mountain Valley Bank	Walden	Colorado.
First Pioneer National Bank	Wray	Colorado.
Wray State Bank	Wray	Colorado.
Labette Bank	Altamont	Kansas.
Equity Bank, a National Association	Andover	Kansas.
The Union State Bank—Arkansas City, KS	Arkansas City	Kansas.
The Exchange NB & TC of Atchison	Atchison	Kansas.
The Baxter State Bank—Baxter Springs, KS	Baxter Springs	Kansas.
The First National Bank of Beloit	Beloit	Kansas.
First National Bank of Kansas	Burlington	Kansas.
Farmers & Merchants State Bank—Cawker City	Cawker City	Kansas.
The First National Bank of Centralia	Centralia	Kansas.
Union State Bank of Clay Center	Clay Center	Kansas.
Swedish-American State Bank	Courtland	Kansas.
The State Bank of Delphos—Delphos, KS	Delphos	Kansas.
Virus Bank, NA	Derby	Kansas.
First Community Bank	Emporia	Kansas.
The Lyons County State Bank	Emporia	Kansas.
First National Bank in Frankfort	Frankfort	Kansas.
Golden Plains Credit Union	Garden City	Kansas.
The Citizens State Bank—Gridley, KS	Gridley	Kansas.
First National Bank of Harleysville	Harleysville	Kansas.
Citizens State Bank and Trust Co.—Hiawatha	Hiawatha	Kansas.
First Kansas Bank	Hoisington	Kansas.
The First National Bank of Hope	Hope	Kansas.
Citizens State Bank	Hugoton	Kansas.
First National Bank of Hutchinson	Hutchinson	Kansas.
The FNB&T Company	Junction City	Kansas.
Brotherhood Bank & Trust Co.—Kansas City,	Kansas City	Kansas.
Peoples Bank	Lawrence	Kansas.
CrossFirst Bank of Leawood	Leawood	Kansas.
U.S. Central Federal Credit Union	Lenexa	Kansas.
Community Bank (The)	Liberal	Kansas.
The First National Bank of Louisburg	Louisburg	Kansas.
The Lyndon State Bank	Lyndon	Kansas.
Community First National Bank	Manhattan	Kansas.
Landmark National Bank	Manhattan	Kansas.
Peoples State Bank	McDonald	Kansas.
Farmers Alliance Mutual Insurance Company	McPherson	Kansas.
Home State Bank & Trust Company	McPherson	Kansas.
Peoples Bank & Trust Co.—McPherson, KS	McPherson	Kansas.
The First National Bank of Southern Kansas	Mount Hope	Kansas.
First Neodesha Bank—Neodesha, KS	Neodesha	Kansas.
The Kansas State Bank	Ottawa	Kansas.
Cornerstone Bank	Overland Park	Kansas.
Hillcrest Bank—Overland Park, KS	Overland Park	Kansas.
First National Bank	Palco-Hays	Kansas.
Commercial Bank	Parsons	Kansas.
First National Bank And Trust	Phillipsburg	Kansas.
Midwest Community Bank	Plainville	Kansas.
The Exchange State Bank	St. Paul	Kansas.
Towanda State Bank—Towanda, KS	Towanda	Kansas.
Grant County Bank—Ulysses, KS	Ulysses	Kansas.
The Union State Bank—Uniontown, KS	Uniontown	Kansas.
Trego-wakeeney State Bank	Wakeeney	Kansas.
Security State Bank—Wellington, KS	Wellington	Kansas.
Wilson State Bank	Wilson	Kansas.
CornerBank, National Association	Winfield	Kansas.
Battle Creek State Bank—Battle Creek, NE	Battle Creek	Nebraska.
Columbus Bank and Trust Company—Columbus,	Columbus	Nebraska.
The Fremont National B&T Co.	Fremont	Nebraska.
Fullerton National Bank	Fullerton	Nebraska.
Thayer County Bank—Hebron, NE	Hebron	Nebraska.
Union Bank and Trust Company—Lincoln, NE	Lincoln	Nebraska.
The McCook National Bank	McCook	Nebraska.
Adams Bank & Trust—Ogallala, NE	Ogallala	Nebraska.
First Westroads Bank, Inc.	Omaha	Nebraska.
Metro Health Services FCU	Omaha	Nebraska.
Mutual First Federal Credit Union	Omaha	Nebraska.
Omaha State Bank—Omaha, NE	Omaha	Nebraska.
First National Bank in Ord	Ord	Nebraska.
First National Bank	Schuyler	Nebraska.
Stanton State Bank	Stanton	Nebraska.

Farmers & Merchants State Bank—Wayne, NE	Wayne	Nebraska.
First United Bank & Trust Company—Durant,	Durant	Oklahoma.
Central NB&T Company of Enid	Enid	Oklahoma.
Farmers & Merchants NB of Fairview	Fairview	Oklahoma.
Security First National Bank	Hugo	Oklahoma.
First Fidelity Bank, N.A.	Oklahoma City	Oklahoma.
The Pauls Valley National Bank	Pauls Valley	Oklahoma.
First State Bank in Temple—Temple, OK	Temple	Oklahoma.
The First Farmers NB of Waurika	Waurika	Oklahoma.
Federal Home Loan Bank of San Francisco—District 11		
Bank of Alameda	Alameda	California.
City National Bank	Los Angeles	California.
First Mountain Bank	Big Bear Lake	California.
Premier Valley Bank	Fresno	California.
The Bank of Hemet	Riverside	California.
Gold Country Bank, N.A.	Marysville	California.
Circle Bank	Novato	California.
Addison Avenue Federal Credit Union	Palo Alto	California.
One West Bank, FSB	Pasadena	California.
Cornerstone Community Bank	Red Bluff	California.
Mechanics Bank	Richmond	California.
Altura Credit Union	Riverside	California.
Bank of Sacramento	Sacramento	California.
Trans Pacific National Bank	San Francisco	California.
Borel Private Bank and Trust Company	San Mateo	California.
Montecito Bank & Trust	Santa Barbara	California.
Santa Clara Valley Bank, N.A.	Santa Paula	California.
Community Bank of San Joaquin	Stockton	California.
Bank of The West	Walnut Creek	California.
Bank of Nevada	Las Vegas	Nevada.
Nevada State Bank	Las Vegas	Nevada.
Federal Home Loan Bank of Seattle—District 12		
Bank of Hawaii	Honolulu	Hawaii.
D.L. Evans Bank	Burley	Idaho.
Bank cda	Coeur d'Alene	Idaho.
Citizens Bank & Trust Company	Big Timber	Montana.
First Interstate Bank	Billings	Montana.
Bank of Bridger, National Association	Bridger	Montana.
Teton Banks	Choteau	Montana.
First Security Bank of Deer Lodge	Deer Lodge	Montana.
State Bank & Trust Company	Dillon	Montana.
First Citizens Bank of Polson, NA	Polson	Montana.
Lake County Bank	St. Ignatius	Montana.
Ruby Valley National Bank	Twin Bridges	Montana.
Bank of the Rockies, N.A.	Helena	Montana.
Whitefish Credit Union Association	Whitefish	Montana.
O.S.U. Federal Credit Union	Corvallis	Oregon.
MBank	Gresham	Oregon.
Community Bank	Joseph	Oregon.
Cache Valley Bank	Logan	Utah.
SouthWest Community Federal Credit Union	St. George	Utah.
iQ Credit Union	Vancouver	Washington.
Inland Northwest Bank	Spokane	Washington.
Sound Credit Union	Tacoma	Washington.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before November 5, 2010, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2010 first round review cycle. 12 CFR 1290.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2010 first round review cycle must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail to *hmg communitysupportprogram@fhfa.gov* on or before the December 6, 2010 deadline for submission of Community Support Statements.

Dated: October 12, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–26776 Filed 10–21–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Emergency Information Collection Clearance Request for Public Comment

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 30 days.

Proposed Project: Healthy Living Innovation Awards—OMB No. 0990–NEW—Emergency Information Collection Clearance Request—Assistant Secretary Planning Evaluation (ASPE).

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting emergency approval from the Office of Management and Budget (OMB) to receive applications from public and private sector organizations for the Healthy Living Innovation Awards. The project will provide an opportunity for HHS to increase public awareness of creative approaches to develop and expand innovative health promotion programs and duplicate successful strategies in various settings. The Healthy Living Innovation Awards is a new HHS initiative designed to identify and acknowledge innovative health promotion projects within the last 3 years that have demonstrated a significant impact on the health status of a community. As a part of the Awards selection process interested private and public sector organizations will nominate themselves by completing an online form that asks several questions related to the project and the organization as a whole. The responses to these questions will be used to determine the best-qualified nominees for several award categories. An HHS expert panel will review nominations and make an initial selection of the most promising innovations in each category. An executive summary of the nomination form for the most promising innovations will then be posted on the HHS Healthy Living Innovation Awards Web site for public voting. The Secretary of the U.S. Department of Health and Human Services will make final determination of the award winners in each category based on public votes and recommendations from the HHS expert panel. The Secretary will present awards to the winners in a public recognition ceremony in Washington DC. Data collection activities will be completed within 6 months of OMB clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Organizations (Social and Community Service Managers)	120	1	30/60	60

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–26753 Filed 10–21–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretarial Review and Publication of the Annual Report to Congress Submitted by the Contracted Consensus-Based Entity Regarding Performance Measurement

AGENCY: Office of the Secretary of Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the Department of Health and Human Services' (HHS) receipt and review of the annual report submitted to the Secretary and Congress by the contracted consensus-based entity regarding performance measurement as mandated by section 183 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). The statute requires HHS to publish not later than six months after receiving the annual report to Congress in the **Federal Register** together with any Secretarial comments.

FOR FURTHER INFORMATION CONTACT: Kate Goodrich (202) 690–7213.

I. Background

Rising health care costs coupled with the growing concern over the level and variation in quality and efficiency in the provision of health care raise important challenges for the United States. Congress mandated the Secretary of the Department of Health and Human Services (HHS) to contract with a consensus-based entity regarding performance measurement to support HHS' efforts to achieve value as a purchaser of high-quality, patient-centered, and financially sustainable health care. Section 183 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) added section 1890 to the Social Security Act (the Act). The statute mandates that the contract shall be competitively awarded for a period four years and may be renewed under a subsequent competitive contracting process.

In January 2009, a competitive contract was awarded by HHS to the National Quality Forum (NQF) for a four-year period. The contract specified that NQF should conduct its business in an open and transparent manner, provide the opportunity for public comment and ensure that membership fees do not pose a barrier to participation in the scope of HHS' contract activities, if applicable.

The HHS four-year contract with NQF includes the following major tasks:

Formulation of National Strategy and Priorities for Health Care Performance

Measurement—NQF shall synthesize evidence and convene key stakeholders on the formulation of an integrated national strategy and priorities for health care performance measurement in all applicable settings. NQF shall give priority to measures: That address the health care provided to patients with prevalent, high-cost chronic diseases; provide the greatest potential for improving quality, efficiency and patient-centered health care; and may be implemented rapidly due to existing evidence, standards of care or other reasons. NQF shall consider measures that assist consumers and patients in making informed health care decisions; address health disparities across groups and areas; and address the continuum of care across multiple providers, practitioners and settings.

Implementation of a Consensus Process for Endorsement of Health Care Quality Measures—NQF shall implement a consensus process for endorsement of standardized health care performance measures which shall consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, and responsive to variations in patient characteristics such as health status, language capabilities, race or ethnicity, and income level and is consistent across types of providers including hospitals and physicians.

Maintenance of Consensus Endorsed Measures—NQF shall establish and implement a maintenance process to ensure that endorsed measures are updated (or retired if obsolete) as new evidence is developed.

Promotion of Electronic Health Records—NQF shall promote the development and use of electronic health records that contain the functionality for automated collection, aggregation, and transmission of performance measurement information.

Focused Measure Development, Harmonization, and Endorsement Efforts To Fill Critical Gaps in Performance Measurement—At the request and direction of HHS, NQF shall complete targeted tasks to support performance measurement development, harmonization, endorsement and/or gap analysis.

Development of a Public Web site for Project Documents—NQF shall develop a public website to provide access to project documents and processes. The HHS contract work is found at: *http://www.qualityforum.org/projects/ongoing/hhs/.*

Annual Report to Congress and the Secretary—Under section 1890(b)(5)(A) of the Act, by not later than March 1 of each year (beginning with 2009), NQF shall submit to Congress and the Secretary of HHS an annual report. The report shall contain a description of the implementation of quality measurement initiatives under the Act and the coordination of such initiatives with quality initiatives implemented by other payers; a summary of activities and recommendations from the national strategy and priorities for health care performance measurement task; and a discussion of performance by NQF of the duties required under the HHS contract. Section 1890(b)(5)(B) of the Social Security Act, as created by section 183 of MIPPA, requires the Secretarial review of the annual report to Congress upon receipt and the publication of the report in the **Federal Register** together with any Secretarial comments not later than 6 months after receiving the report.

The first annual report covered the performance period of January 14, 2009 to February 28, 2009 or the first six weeks post contract award. Given the short timeframe between award and the statutory requirement for the submission of the first annual report, the first annual report provided a brief summary of future plans. In March 2009, NQF submitted the first annual report to Congress and the Secretary of HHS. The Secretary published a notice in the **Federal Register** in compliance with the statutory mandate for review and publication of the annual report on September 10, 2009 (74 FR 46594).

In March 2010, NQF submitted to Congress and Secretary of HHS the second annual report. This notice complies with the statutorily required Secretarial review and publication of the second annual report covering the period of performance of March 1, 2009 through February 28, 2010.

II. March 2010—NQF Report to Congress and HHS Secretary

Submitted in March 2010, the second annual report to Congress and the Secretary spans the period of March 1, 2009 through February 28, 2010.

A copy of NQF's submission of the March 2010 annual report to Congress and the Secretary of HHS can be found at: *http://www.qualityforum.org/projects/ongoing/hhs/.*

The 2010 NQF annual report is reproduced in section III of this notice.

III. NQF March 2010 Annual Report

Strengthening the National Quality Infrastructure National Quality Forum Accomplishments Under Contract #HHSM–500–209–00010C

Report to the Congress and the Secretary of the U.S. Department of Health and Human Services, Covering the period of March 1, 2009, to February 28, 2010, Pursuant to PL 110–275 and Contract #HHSM–500–209–00010C

Table of Contents

The mission of the National Quality Forum is to improve the quality of American healthcare by setting national priorities and goals for performance improvement, endorsing national consensus standards for measuring and publicly reporting on performance, and promoting the attainment of national goals through education and outreach programs.

A Message From the Leadership of the National Quality Forum

Ten years ago, the Institute of Medicine (IOM) exposed the U.S. healthcare system's numerous quality and patient safety deficiencies with the publication of its landmark report, *To Err is Human.*[1] In the decade since, numerous local, regional, and national quality improvement initiatives, including but not limited to programs supported by the federal and state governments, have sought to correct these deficiencies. Many of these activities have borne fruit. Some can definitively be credited with saving American lives.

Despite these successes, and despite the dedicated effort of millions of well-trained, committed, and compassionate healthcare workers, the quality of healthcare in the United States still is not nearly as good as it could or should be. Thousands of Americans die every year, and millions more are injured, as a result of medical error. Processes of care vary widely by region, state, and provider, with no apparent benefit to patients. Healthcare in the United States is plagued by inequities based on race, ethnicity, gender, and other factors.

Costs—including costs to taxpayers—have skyrocketed. Millions of Americans are denied access to care because they lack sufficient insurance.

As the decade progressed, it became clear that the nation's numerous quality initiatives, successful though many may have been, were no substitute for a coordinated national strategy to systematically improve the quality of healthcare in the United States. To help formulate such a strategy, Congress in 2008 passed the Medicare Improvements for Patients and Providers Act (Pub. L. 110–275).[2] One goal of the legislation is to establish a portfolio of quality and efficiency measures that will allow the federal government to see more clearly how and whether public healthcare spending is achieving the best results for Americans. On January 14, 2009, NQF was awarded a contract that addresses the Act's Section 183, which calls for the Department of Health and Human Services (DHHS) "to contract with a consensus-based entity, such as the National Quality Forum." This report summarizes the work performed under this contract between March 1, 2009, and February 28, 2010, the first full year that the DHHS contract has been in place.

As we review the work performed over the past year, it becomes apparent that 2009 was a year of building infrastructure to support healthcare quality. Much like physical infrastructure, the nation's healthcare quality infrastructure must be constructed with precise attention to detail, and then maintained so that it meets the expanding needs of those it serves. Priorities and goals must be identified to focus improvement efforts on areas that will yield the greatest gains in terms of improved health and healthcare; and performance measures must be developed, endorsed, and implemented to gauge delivery system progress and reveal opportunities for improvement.

Many of the activities NQF has performed under the DHHS contract are in midstream and extend beyond a single year's worth of work. Nevertheless, we have completed significant work in several areas, including:

- The development of a prioritized set of conditions for quality improvement;
- The endorsement of performance measures in critical gap areas; and
- The establishment of common protocols and standardized formats for e-measure specification and the creation of an electronic measure authoring environment to enable retooling of performance measures for the assessment of "meaningful use" of health information technology (HIT).

We are grateful to Congress and DHHS for supporting NQF's work in nurturing the quality enterprise in the United States; to the more than 400 institutional members of NQF who have sustained the organization and, in doing so, have helped build the healthcare quality improvement movement; and to NQF's expert panel volunteers and staff, whose tireless efforts on behalf of American patients contribute to a healthcare system that is becoming, as the IOM envisioned, safe, timely, effective, efficient, equitable, and patient centered.

During the last year, we built a stronger foundation for healthcare performance improvement in the United States. We are confident that in 2010 and beyond, Americans will reap the benefits of our healthcare quality infrastructure.

1. Executive Summary

The National Quality Forum (NQF) was created in 1999 to develop and implement a national strategy for healthcare quality improvement. It has grown into an influential consensus-based organization in healthcare in the United States, supported by more than 400 organizational members and boasting a unique structure that enables private and public sector stakeholders to collaborate on cross-cutting solutions to drive continuous performance improvement. NQF's core work includes the establishment of national priorities and the endorsement of performance measures. NQF follows a formal Consensus Development Process recognized under the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), which grants its endorsed measures and best practices special legal standing as national voluntary consensus standards.

Section 183 of the Medicare Improvements for Patients and Providers Act (Pub. L. 110–275) of 2008 calls for the Department of Health and Human Services (DHHS) "to contract with a consensus-based entity, such as the National Quality Forum" (NQF) for the purpose of pursuing certain activities relating to healthcare performance measurement. On January 14, 2009, the National Quality Forum was awarded a contract under this Section. The contract provided up to $10 million for the first year after award with the option for three $10 million annual renewals. Among other assignments, the contract called for NQF to:

- Develop a prioritized list of conditions that impose heavy health burden on beneficiaries and account for significant costs;
- Identify and endorse measures that can be used by various stakeholders to assess and improve the care provided to beneficiaries with these conditions, and the performance of providers in various healthcare settings; and
- Promote the use of electronic health records (EHRs) for performance measurement, reporting, and improvement.

This report summarizes the work performed under this contract between March 1, 2009, and February 28, 2010, the first full year that the DHHS contract has been in place.

Many of the activities NQF has performed under the DHHS contract are in midstream and extend beyond a single year's worth of work. Under the DHHS contract, NQF has achieved significant accomplishments in the following areas:

- Developed a framework, composed of the 20 priority conditions for Medicare and the six cross-cutting priority areas identified by the NQF-convened National Priorities Partnership, for focusing performance measurement, public reporting, and improvement efforts;
- Conducted an environmental scan of existing performance measures and measures under development, and began constructing a prioritized agenda for measure development and endorsement;
- Initiated endorsement projects to expand the portfolio of NQF-endorsed® measures in key gap areas: Patient outcomes, efficiency, patient safety, and nursing home care;
- Enhanced processes for ongoing "measure maintenance" to ensure that the more than 550 measures that NQF already has endorsed are continuously updated to reflect changes in the evidence base as it evolves and undergo comprehensive assessment on a three-year cycle to maintain "best in class" standing;
- Contracted with an applied research firm to conduct an independent evaluation of its Consensus Development Process;
- Began work on a two-year plan for the evolution of NQF's portfolio of endorsed patient safety measures, "safe practices," and serious reportable events;
- Undertook an environmental scan to review the state of reporting with respect to patient safety events and serious reportable events at the federal and state level;

• Completed an evaluation of the types of data that must be captured in electronic health records (EHRs) to support measurement and improvement on the more than 550 NQF-endorsed performance measures;

• Developed a standardized format (*i.e.,* the Health Quality Measure Format) for representing a health quality measure in a machine-readable electronic format, which has now been approved by HL7 for use in EHRs; and

• Produced an enhanced Web site, featuring an online performance measure submission form, an improved online platform for public comment, and an online directory of NQF-endorsed consensus standards.

Much like physical infrastructure, the nation's Healthcare quality infrastructure must be constructed with precise attention to detail, and then maintained so that it meets the expanding needs of those it serves. In 2009, under the DHHS contract, NQF took great strides in building and supporting that infrastructure. In 2010 and beyond, the United States will reap significant benefits from investments in this quality infrastructure, which is critical to support expanded public reporting and payment reform and foster continuous quality improvement in American healthcare.

2. About the Contract

The Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275) is a wide-ranging law that addresses many aspects of Medicare and Medicaid, including the addition of new benefits for Medicare beneficiaries. Section 183 of the Act, among other things, directs the Secretary of DHHS to contract with a consensus-based entity for certain activities relating to healthcare performance measurement.

On January 14, 2009, NQF was awarded a contract, HHSM–500–209–00010C, under Section 183 of the Medicare Improvements for Patients and Providers Act. The DHHS contract is administered by the Office of the Assistant Secretary for Planning and Evaluation (ASPE), which provides strategic leadership and technical insight for the contract, and by the Centers for Medicare & Medicaid Services (CMS), which provides technical input and operational support. The contract provided up to $10 million for the first year after award, with the option for three $10 million annual renewals through 2012. It called for NQF to:

• Develop a prioritized list of conditions that impose heavy health burden on beneficiaries and account for significant costs;

• Identify and endorse measures that can be used by various stakeholders to assess and improve the care provided to beneficiaries with these conditions, and the performance of providers in various healthcare settings;

• Identify programs to track and disseminate measures;

• Ensure performance measures are regularly and appropriately updated and remain relevant for public reporting and improvement;

• Promote the use of EHRs for performance measurement, reporting, and improvement; and

• Report annually to Congress on the status of the project and progress to date.

While the work conducted under the contract is intended specifically to benefit all those served by DHHS programs, it will have the salutary additional benefit of improving care for all Americans. The work being conducted under this contract directly relates to NQF's core competencies and recent accomplishments in three areas:

• **Setting National Priorities and Goals.** NQF has convened leaders from major stakeholder groups and through this process has identified National Priorities and Goals for Performance Improvement. This work provides a foundation for the priority-setting efforts under this contract, which focus on clinical conditions.

• **Endorsing performance measures.** NQF has endorsed more than 500 performance measures and best practices under its formal Consensus Development Process, granting those measures and practices special legal standing as voluntary consensus standards.

• **Facilitating the development of EHRs to support measurement and improvement.** NQF has worked to identify the types of information that need to be included in an EHR to enable reporting on quality metrics.

Under the contract, DHHS asked that performance measures focus on "outcomes and efficiencies that matter to patients, align with electronic collection at the front end of care, encompass episodes of care when possible, and be attributable to providers where possible. A premium must be placed on developing measures in key areas that will have the greatest impact in improving quality and value, rather than focusing on developing a large number of measures that may be easiest to produce, such as process measures."

The contract is divided into 12 tasks. Six of the tasks are procedural—involving an opening meeting, the development of a work plan, the development and implementation of a quality assurance Internal Evaluation Plan, weekly conference calls, monthly progress reports, and the creation of this annual report. The remaining six call for specific deliverables and are the focus of this report.

Task 6 is the formulation of a national strategy and priorities for healthcare performance measurement. **Task 7** is the implementation of a consensus process for the endorsement of healthcare quality measures. Task 7 includes an evaluation of NQF's Consensus Development Process and the conduct of consensus projects focusing on known measure gap areas. **Task 8** is the maintenance of previously endorsed NQF measures. **Task 9** is the promotion of EHRs. **Task 11** is the development of a public Web site for project documents. **Task 12** calls for measure development, harmonization, and endorsement efforts to fill critical gaps in performance measurement. Task 12 is divided into three subtasks: Efficiency, harmonization, and ICD–10.

Details of work performed under the DHHS contract in each of these tasks are found in Section 3 of this report.

3. Work Performed by the National Quality Forum Under the DHHS Contract in 2009

This section describes details of work performed under each task according to the DHHS contract in the past year.

National Strategy and Priorities (Task 6)

A two-dimensional framework—consisting of leading conditions and cross-cutting areas—has been developed to focus performance measurement and improvement on high-leverage areas having the greatest potential to improve health and healthcare. Starting with the Medicare 20 priority conditions, which collectively account for 95 percent of Medicare expenditures (*see Exhibit A*), an expert panel is working to prioritize these conditions based on cost, prevalence, improvability, variability, and disparities. The second part of the strategy builds on work previously performed by the National Priorities Partnership,[3] 32 major national healthcare stakeholder organizations (*see Appendix D*) convened by NQF, which identified six crosscutting priority areas that affect many conditions: Patient and family engagement, population health, safety, care coordination, palliative and end-of-life care, and overuse.[4] To identify gaps, currently available performance measures have been mapped to this framework.

To further inform the process of setting an agenda for measure development and endorsement, NQF is convening experts and gathering information to identify specific types of measures needed to support Medicare payment and public reporting programs, "meaningful use" of HIT, and other applications. This work is scheduled for completion in the third quarter of 2010.

Exhibit A: Medicare 20 Priority Conditions

To assist in carrying out its responsibilities, in 2009 NQF issued a firm, fixed-price contract for a qualified contractor to perform a systematic review and synthesis of evidence relating to 20 high-priority conditions identified by the Centers for Medicare & Medicaid Services. Patients with these conditions account for more than 95 percent of Medicare's costs. The 20 conditions (not in any order of priority) are:

- Acute myocardial infarction
- Alzheimer's disease and related disorders
- Atrial fibrillation
- Breast cancer
- Cataract
- Congestive heart failure
- Chronic kidney disease
- Colorectal cancer
- Chronic obstructive pulmonary disorder
- Diabetes
- Endometrial cancer
- Glaucoma
- Hip/pelvic fracture
- Ischemic heart disease
- Lung cancer
- Major depression
- Osteoporosis
- Prostate cancer
- Rheumatoid arthritis and osteoarthritis
- Stroke/transient ischemic attack

Consensus Development Process for Measure Endorsement (Task 7)

The stakeholder-based endorsement of performance measures via a formal Consensus Development Process (CDP) has long been NQF's "stock in trade." This task involves both a formal evaluation of the endorsement process and the conduct of a set of endorsement projects focused on known measure gap areas.

Evaluation of the Consensus Development Process. NQF follows a nine-step process (*Exhibit B*) to evaluate and endorse consensus standards, including performance measures, serious reportable events, best practices, measurement frameworks, and reporting guidelines. The process is designed to ensure that performance measures endorsed by NQF satisfy certain criteria (*i.e.,* importance, scientific acceptability, usability, and feasibility) and represent the "best in class." The process is transparent and provides for extensive input from all stakeholders. Over the past 10 years, the steps that form NQF's Consensus Development Process and its implementation have evolved to ensure that evaluation of Candidate Consensus Standards continues to follow best practices in performance measurement and standards setting. In 2009, under the DHHS contract, NQF contracted with Mathematica Policy Research Inc. to conduct an independent evaluation of the Consensus Development Process. This evaluation also includes gathering information on similar processes of other standard-setting bodies, which is expected to be useful in further refining NQF's endorsement process. This report is scheduled for completion in October 2010, with the proposed enhancements to the Consensus Development Process scheduled to be considered in January 2011.

Exhibit B: NQF Consensus Development Process (Version 1.8)

1. Call for Intent to Submit Candidate Standards.
2. Call for Nominations.
3. Call for Candidate Standards.
4. Candidate Consensus Standard Review.
5. Public and Member Comment.
6. Member Voting.
7. Consensus Standards Approval Committee Decision.
8. Board Ratification.
9. Appeals.

Endorsement Projects. The current DHHS contract facilitates a coordinated, strategic approach to endorsing performance measures.

As noted above, efforts are underway to develop a comprehensive agenda for measure development and endorsement, which will guide future endorsement work. During this first year of the DHHS contract, the schedule of endorsement projects was determined though a collaborative process involving representatives from the various DHHS departments and NQF, targeting well-known gap areas. On average, it takes less than one year to complete the nine-step Consensus Development Process. Endorsement projects fall into two broad categories: Quality and efficiency, and patient safety.

Quality and Efficiency. Many projects in this area focus on measures of patient outcomes and efficiency, thus laying the groundwork for assessing the "value" received from healthcare services. Considerable attention also is paid to settings outside the hospital and to care transitions.

- **Patient outcome measures.** This three-phase project focuses on cross-cutting and condition-specific outcome measures. Specifically, outcome measures will be endorsed for patients with Medicare high priority conditions, such as: Congestive heart failure, chronic obstructive pulmonary disease, arthritis, diabetes, depression, and several types of cancers. There is also a phase of work dedicated to outcome measures for children. The conditions included in each phase are:
  - *Phase I:* Cardiovascular diseases, including acute myocardial infarction, ischemic heart disease, congestive heart failure, atrial fibrillation, and stroke/transient ischemic attacks, metabolic diseases, including diabetes and chronic kidney disease; and pulmonary diseases, including asthma and chronic obstructive pulmonary disease.
  - *Phase II:* Cancer, including breast, lung, colorectal, and endometrial cancers; bone/joint diseases, including hip fracture, osteoporosis, and arthritis; and infection, including pneumonia.
  - *Phase III:* Child health and mental health. In future years, measures derived from this phase include a core measure set for the Children's Health Insurance Program Reauthorization Act of 2009.
- **Nursing home measures.** This project focuses on the endorsement of performance measures for nursing homes. It will include an updated set of measures to assess and improve care provided in nursing homes.

Patient Safety. NQF has a sizable portfolio of endorsed serious reportable events, patient safety measures, and safe practices that are used extensively by DHHS and states in reporting and payment programs, and by providers for improvement purposes. On October 6, 2009, NQF convened the Patient Safety Advisory Committee to assess current initiatives and develop a two-year strategic work plan for the evolution of the NQF portfolio. This strategic plan, when completed in fall 2010, will guide NQF's safety work in 2011 and 2012. The initial set of 2009 projects focuses on known gap areas.

- **Serious Reportable Events (SREs).** NQF has long been a pioneer in this area, dating to its 2002 report *Serious Reportable Events in Healthcare: A Consensus Report,* which listed 27 preventable events leading to death or serious injury that should be publicly reported. (The program was updated in 2006, with a 28th event added.) This list formed the core of the Medicare non-payment program for healthcare-acquired conditions, as well as many state-based adverse event reporting initiatives. This project will consider expanding the list of serious reportable events to include events that are applicable to additional non-hospital settings, such as nursing homes and ambulatory care settings. The project includes convening representatives of state-based adverse event-reporting agencies to review the current environment of adverse event reporting systems, related issues, and unintended consequences, as well as to obtain their input on the next generation of events.

• **Patient safety measures.** This project focuses on key safety measures such as healthcare-associated infections. As a part of this project, currently endorsed infection measures will be updated to reflect updated case definitions from the Centers for Disease Control and Prevention. Other focus areas for patient safety measures will include condition specific measures and reviewing applicability of safety measures to a variety of environments of care.

• **Patient safety public reporting guidelines.** Public reporting of patient safety performance results can be challenging, especially for serious reportable events and low-frequency safety events. This project aims to develop a framework and guidelines for measuring, evaluating, and publicly reporting patient safety information across the spectrum for severity and frequency of events.

Maintenance of Previously Endorsed Measures (Task 8)

Healthcare performance measures and similar consensus standards are useful for improving quality only as long as the standards reflect current knowledge and state-of-the art, high-quality care. The maintenance of NQF-endorsed measures is of critical importance because the science underlying both clinical practice and safe, effective, and efficient care delivery evolves over time. Ongoing maintenance processes also ensure that measure specifications reflect updates in coding systems, such as ICD–10–CM.

Specifically, the currency of the NQF portfolio refers to four factors:

1. **Importance of the Measure Topic.** Does the measure reflect current clinical science and guidelines? Is there still a gap between actual and ideal performance? (Or is the measure "topped out?")

2. **Measure Specifications.** Do the specifications reflect current coding and classification systems? (In addition, as discussed below, future maintenance processes will require stewards to submit e-specifications so measures can be used with electronic health records.)

3. **Harmonization.** There are currently dozens of measure developers, all of whom follow different conventions and practices when specifying measures. Through its endorsement and maintenance processes, NQF works with measure stewards to harmonize their measures. Harmonization facilitates the use of measures in sets (*e.g.,* a composite measure for patients with diabetes that reflects the outcomes and clinical process measures for a patient-focused episode) and makes it easier to understand and interpret results. Harmonization also lessens the burden of implementation.

4. **Best in Class.** There is much innovation in the development of measures. NQF-endorsed measures are subject to a competitive review every three years in which they must demonstrate "best in class" when compared directly with other candidate measures.

In 2009, NQF developed a comprehensive schedule for review of measures pertaining to the leading conditions and the National Priorities Partnership cross-cutting areas. The new measure maintenance schedule will provide an annual update of measure specifications. Measures will undergo a comprehensive review at least every three years, including harmonization and best in class considerations. In addition to scheduled maintenance, ad hoc maintenance reviews are conducted if there are significant changes in the science base requiring immediate attention or concerns are raised about untoward consequences of measurement.

Promotion of EHRs (Task 9)

It is broadly recognized that EHR systems can improve the quality of care delivered to patients. Health information technology (HIT)-enabled content and transactions can make important healthcare information more readily available to those who need it when they need it. If implemented with careful attention to workflow and content needs, EHR systems will appreciably improve the safety, effectiveness, and efficiency of American healthcare, leading to widespread and sustainable quality improvement. Such systems will support clinical decisions; grant patients and clinicians access to health records and improve the accuracy of those records; seamlessly integrate clinical and payment functions; and facilitate the collection, reporting, and analysis of quality data.

• **The "eMeasure."** In 2009, NQF developed and oversaw standardization of the Health Quality Measure Format, commonly known as the "eMeasure," representing a health quality measure in a machine-readable electronic format. Through standardization of a measure's structure, metadata, definitions, and logic, the eMeasure provides quality measure consistency and unambiguous interpretation. The eMeasure is a critical component of the workflow to support "meaningful use" of electronic records as described by the American Recovery and Reinvestment Act of 2009. The eMeasure was successfully balloted by the technical standards development organization HL7 at its September 2009 workgroup meeting. The sponsoring workgroup, Structured Documents, approved the ballot as a draft standard for trial use on November 4, 2009. The measure was successfully tested in the HITSP Connectathon in January 2010.

• **Measure Retooling.** In 2009, under the DHHS contract, NQF undertook implementation of its previously completed Quality Data Set (QDS) [5] (*see Exhibit C*) by applying the QDS to measures already endorsed by NQF. NQF staff created an authoring environment for the retooling effort to manage consistency with the QDS and to make the process as efficient as possible. That environment is complete and will be used by measure developers to retool high-priority measures requested by CMS.

• **QDS Model and Repository.** In the contract's first year, some work on standardizing the management of code lists was performed in the standards harmonization process in the Healthcare Information Technology Standards Panel (HITSP) in summer 2009. The HIT Standards Committee has now established a task force on vocabulary, which began work in January 2010 to define the governance and infrastructure rules for vocabulary management. NQF's participation in that task force supports the registry requirements in a stand.

Exhibit C: About the QDS

The Quality Data Set (QDS), developed by NQF's Health Information Technology Expert Panel (HITEP), is a set of data elements or types of data elements that can be used as the basis for developing harmonized and machine-computable quality measures. It is a classification system by which measure developers can offer and refine definitions. Once fully developed, the QDS will be a centralized repository of quality data requirements (such as concepts, data types, data elements, and code lists) and data definitions used by multiple stakeholders to develop, specify, and use quality measures. The QDS aims to provide direction to measure developers, EHR vendors, and other stakeholders on how to define quality terminology without ambiguity. Although the QDS was developed under an earlier grant from the Agency for Healthcare Research and Quality, its implementation is covered under the current DHHS contract.ard manner.

• **Measure Authoring Tool and Guidelines.** In 2009, NQF identified requirements for a measure authoring tool and created a prototype environment for use in the measure retooling effort. An NQF tooling/retooling guide is planned that will expand on that effort, and a more detailed authoring tool will be available for use to create electronic measures in January 2011.

• **Linking Performance Measurement to Clinical Decision Support.** NQF convened a Clinical Decision Support Expert Panel, which met on November 11–12, 2009. The panel created a clinical decision support taxonomy framework and adapted the QDS data requirements to support clinical decision support.

The Development of a Public Web Site (Task 11)

NQF in 2009 undertook an effort to redevelop its own Web site to guarantee that its proceedings would be fully transparent to all stakeholders. The Web site, *http://www.qualityforum.org,* is now fully operational and features an electronic measure submission form to enhance the Consensus Development Process and measure maintenance activities. Specifically, funding from the DHHS contract in this task was used to:

• Produce a new Web site for information about NQF's Consensus Development Process and its specific projects, including their status and opportunities for public and member input;

• Implement additional Web site features; and

• Perform ongoing management of web-based content.

The site was developed and is operated using a content management system to support better content organization and maintenance and editorial oversight. The implementation included integration with other NQF systems and laid a technological foundation that will enable future enhancements. Achievements resulting from this work include:

• A new structure for project information that clearly presents the progress of work through NQF's Consensus Development Process and supports and encourages public review and input;

• Site personalization for registered users, including a dashboard in which users can access information about their participation in NQF activities;

• An online measure submission form and process that improves the electronic collection and dissemination of the information needed to evaluate performance measures for potential endorsement;

• An improved online voting platform, including the ability for users to see the status of their organization's participation; and

• An online directory of NQF-endorsed consensus standards.

Measurement Development, Harmonization, and Endorsement (Task 12)

The DHHS contract provides for measure development and related activities to fill gap areas. In 2009, NQF published requests for proposals for "indefinite need, indefinite quantity" contracts to build capacity in case DHHS decides that performance measures are needed in any given area. This capacity was not requested by DHHS in the first year of the contract. Other specific projects under this task included:

• **Harmonization.** To identify gaps in appropriate care at the appropriate junctures, work is needed to adopt global, harmonized quality measures in all settings. The opportunity to link measurement across providers and sites of care will form the foundation for a systems-based perspective to healthcare delivery, the reduction or elimination of preventable illnesses, and the delivery of high-quality care. Thus, NQF is planning to identify the steps needed to achieve harmonization, including how to encourage measure developers to achieve measure harmonization with measures across sites and providers of care. This work is ongoing.

• **Efficiency and resource use measures.** The current portfolio of NQF measures contains very limited numbers of performance measures to assess efficiency and resource use. In its new phase of work, NQF has received 18 measures in mammography, appropriate use of CT scans, and cardiac imaging. A second phase of work will focus on measures of episode-based resource use.

• **ICD–10.** DHHS utilizes various code sets to classify medical care for purposes of payment and performance measurement. The International Classification of Diseases (ICD) code set [6] is used to identify diagnoses (diseases, injuries, and impairments) and procedures (diagnosing, managing, treating, preventing). DHHS intends to convert from the ICD, Ninth Revision (ICD–9) to ICD, Tenth Revision, Clinical Modification (ICD–10–CM) by 2013. In this project, NQF is examining the implications of additional code set requirements on performance measures and developing guidance and a schedule for updating measures by the 2013 coding conversion deadline. In 2009, NQF convened an expert panel to consider coding issues and how they affect performance measurement, including defining and laying out a process for responding to "material changes" in measures that may result from the coding conversion process. This work is ongoing.

4. 2010 and Beyond: A Look Ahead

The decade since IOM published *To Err is Human* has seen the maturation of the modern-day healthcare quality improvement movement in the United States. It is no longer accepted as a matter of faith that the United States boasts the "best healthcare system in the world." Today, we know that despite the heroic effort of millions of dedicated individuals, healthcare quality is deficient in many areas. Further, we know that healthcare quality is measurable, and that quality deficiencies must be measured—with the results of these measurements publicly reported—if we hope to correct them. This recognition, while sobering, has led to a national commitment to improve the quality of healthcare for all Americans. Following this commitment, the recognition has led to the construction of a national infrastructure for quality improvement—including the formulation of national priorities, the use of agreed-upon performance measures to gauge quality, and an EHR system to collect and disseminate performance data.

As the quality movement has matured, so too has the National Quality Forum. When the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry proposed the creation of a forum that would convene disparate stakeholders to formulate a national strategy for healthcare quality, the idea seemed novel. Today, NQF is itself a firmly entrenched stakeholder, advocating for healthcare quality improvement while serving no interest other than that of the public at large.

NQF's work today supports key DHHS work outlined in the American Recovery and Reinvestment Act of 2009 in three important ways:

• Supporting the HIT provisions by ensuring that EHRs have the necessary capabilities to foster performance measurement and public reporting;

• Focusing performance improvement activities on reducing healthcare-associated infections and enhancing chronic disease outcomes; and

• Identifying key gaps in the evidence base to sustain the Recovery Act's comparative effectiveness research goals.

NQF remains firmly committed to a broad, quality-focused transformation of the healthcare system, including supporting goals in quality, access, and affordability that may be achieved through national health reform legislation.

The focus of the American quality improvement endeavor has moved beyond measures of process to include measures of outcomes that matter most to patients. In response to soaring healthcare costs, efforts are now underway to develop and endorse efficiency measures that can be used to remove waste and unnecessary services from the healthcare system. This shift is fraught with challenges as the healthcare industry seeks to find and agree upon measures that are important, scientifically acceptable, usable, and feasible—and is subject to controversy because results of these measures will be used in payment and public reporting programs.

The quality infrastructure we are building today will be important for decades to come. It is a fundamental building block for transforming the American healthcare system to provide patient-centered care that is safe, effective, and affordable.

The National Quality Forum, Washington, DC, March 1, 2010.

5. Appendices and Notes

Appendix A: About National Quality Forum

The National Quality Forum is a nonprofit organization that aims to improve the quality of healthcare for all Americans through fulfillment of its three-part mission:

• Setting national priorities and goals for performance improvement;

• Endorsing national consensus standards for measuring and publicly reporting on performance; and

• Promoting the attainment of national goals through education and outreach programs.

NQF was created in 1999 at the recommendation of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry.[7] Today, it is uniquely positioned to serve as a national coordinating and standard-setting center for performance measures. The NQF Board of Directors includes public- and private-sector representatives, with a simple majority of its at-large seats held by consumers and those who purchase services on their behalf. (*See Appendix B.*) It works collaboratively with multiple quality alliances, and has unmatched experience in evaluating and endorsing measures of healthcare performance, many of which are in widespread use. From its inception, NQF sought to convene disparate stakeholders to work toward the common goal of improving healthcare quality by advancing performance measurement and public reporting. NQF member organizations are organized into eight member councils—consumers; purchasers; healthcare professionals; health plans; provider organizations; public/community health agencies; quality measurement, research and quality improvement organizations; and suppliers and industry.

Adhering to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) [8] and the Office of Management and Budget's definition of consensus,[9] NQF endorses performance measures, best practices, serious reportable events, measurement frameworks, and reporting guidelines through its formal Consensus Development Process,[10] which is designed to call for input and carefully consider the interests of stakeholder groups from across the healthcare industry. The strict adherence to this Consensus Development Process qualifies NQF as a voluntary consensus standards-setting organization, granting its endorsed measures and best practices special legal standing. NQF's work can be divided into three broad categories:

1. **National Priorities and Goals**. In 2008, NQF embarked on the nation's largest effort to determine national priorities for healthcare quality improvement. NQF convened the National Priorities Partnership (NPP), a diverse group of 32 major national organizations representing those who receive, pay for, deliver, and evaluate healthcare. (*See Appendix D.*) The NPP, co-chaired by Donald M. Berwick, MD, MPP, president and CEO of the Institute for Healthcare Improvement, and Margaret E. O'Kane, president of the National Committee for Quality Assurance, sought to set in motion a national movement to deliver transformative improvements to the nation's health and healthcare system. In 2008, the NPP released a landmark action agenda, with six priorities to transform healthcare during a time of severe economic strain by better investing resources to fundamentally improve patient care and outcomes. These priorities and the specific, measurable actions springing from them guide much of NQF's ongoing work.

2. **Endorsement of Consensus Standards.** The careful evaluation and endorsement of consensus standards is central to NQF's ongoing mission to improve the quality of American healthcare. Using its rigorous Consensus Development Process, NQF fosters consensus among a wide variety of stakeholders around specific standards that can be used to measure and publicly report healthcare quality. NQF endorses several different kinds of consensus standards, each of which can be used to assess different aspects of healthcare quality: performance measures, practices, frameworks, and reporting guidelines. To date, NQF has endorsed more than 550 consensus standards.

○ **Performance Measures.** Measures gauging the performance of healthcare endorsed by NQF are used for measuring and publicly reporting on the performance of different aspects of the healthcare system and are widely viewed as the "gold standard" for the measurement of healthcare quality. One early model for the implementation of NQF endorsed performance measures was *National Voluntary Consensus Standards for Hospital Care: An Initial Performance Measure Set.*[11] This report contained 39 performance measures gauging the quality of care delivered in hospitals. It was endorsed through NQF's Consensus Development Process. These hospital measures took on additional importance when 10 of them became the "starter set" of measures employed by the Hospital Quality Alliance [12] and CMS's Hospital Compare [13] to encourage public reporting of hospital performance measures.

○ **Patient Safety.** NQF has an established track record of national leadership regarding patient safety. Two of its very early projects launched NQF's work in this area. The first was *Serious Reportable Events in Healthcare: A Consensus Report,*[14] in which NQF named 27 events leading to death or serious injury that should not occur in any healthcare setting, but unfortunately do, and should be publicly reported when they do occur. These events and their NQF revisions became the cornerstone of many state-based adverse event-reporting initiatives and of CMS's policies regarding payment for healthcare-acquired conditions. The second was *Safe Practices for Better Healthcare: A Consensus Report,*[15] a set of 30 practices that, if universally applied in all clinical care settings, would substantially reduce the risk of error and harm for patients. These practices have become the standard by which many healthcare organizations measure their patient safety goals and strategies. Both of these reports have been revised twice since initial publication.

3. **Education and Outreach.** As part of its ongoing commitment to the advancement of healthcare quality, NQF produces a variety of publications, such as issue briefs; conducts educational outreach sessions such as webinars; sponsors an annual conference that brings together healthcare and community leaders to develop national solutions to quality concerns; convenes healthcare executives annually for an invitational Leadership Colloquium; and sponsors two annual recognition programs, the National Quality Healthcare Award and the John M. Eisenberg Patient Safety and Quality Awards, highlighting the achievements of professionals and providers.

In 2008, Congress provided a clear mandate and a stable funding stream to address gaps and weaknesses that stood between today's realities and the creation of a coherent national system for establishing performance measures. High-quality standardized performance measures are a public need as well as a public good that benefits all stakeholders. In 2009, NQF was awarded a contract with DHHS under the Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275). The contract provided $10 million for year after award, with the option for three $10 million annual renewals. This contract granted NQF a stable source of core funding to pursue this important work in a coordinated, strategic manner.

Today, NQF is one of the largest consensus-based organizations in healthcare in the United States. Its more than 400 organizational members represent every aspect of the U.S. healthcare system. It has evolved into a truly broad, fully representational organization supporting the nation's quest for a "true north" for healthcare quality. Its strength lies in the active participation of its broad, diverse membership. NQF's unique structure enables private- and public-sector stakeholders to work together to craft and implement cross-cutting solutions to drive continuous quality improvement in the American healthcare system. NQF remains committed to maintaining a constant drumbeat for healthcare quality.

Appendix B: NQF Board of Directors

William L. Roper, MD, MPH (Chair), Dean, School of Medicine, Vice Chancellor for Medical Affairs and CEO, UNC Health Care System, University of North Carolina at Chapel Hill.
John C. Rother, JD (Vice Chair), Executive Vice President for Policy and Strategy, AARP.
Gerald M. Shea (Secretary), Assistant to the President for External Affairs, AFL–CIO.
Richard J. Baron, MD, President and CEO, Greenhouse Internists.
Bruce Bagley, MD, Medical Director for Quality Improvement, American Academy of Family Physicians.
Lawrence M. Becker, Director, HR Strategic Partnerships, Xerox Corporation.
JudyAnn Bigby, MD, Secretary of Health & Human Services, Commonwealth of Massachusetts.
Carolyn M. Clancy, MD, Director, Agency for Healthcare Research and Quality.
Francis S. Collins, MD, PhD, Director, National Institutes of Health.
Janet Corrigan, PhD, MBA, President and CEO, National Quality Forum.
Maureen Corry, MPH, Executive Director, Childbirth Connection.
Helen Darling, MA, President, National Business Group on Health.
Charlene Frizzera, Acting Administrator, Centers for Medicare & Medicaid Services.
Robert Galvin, MD, Director of Global Healthcare, General Electric.
Wade Henderson, Esq., President and CEO, Leadership Conference on Civil Rights.
Karen Ignagni, MBA, President & CEO, America's Health Insurance Plans.
Chris Jennings, President, Jennings Policy Strategies, Inc.
Charles N. "Chip" Kahn III, MPH, President, Federation of American Hospitals.
Peter V. Lee, JD, Executive Director of National Health Policy, Pacific Business Group on Health.
Mark B. McClellan, MD, PhD, Director, Engelberg Center for Healthcare Reform, Senior Fellow for Economic Studies, and Leonard D. Schaeffer Chair in Health Policy Studies, The Brookings Institution.
Sheri S. McCoy, MBA, Worldwide Chairman of the Pharmaceuticals Group, Johnson & Johnson.
Harold D. Miller, President and CEO, Network for Regional Healthcare Improvement.
Mary Naylor, PhD, RN, Marian S. Ware Professor in Gerontology at the University of Pennsylvania School of Nursing, and Director of NewCourtland Center for Transitions and Health.
Debra L. Ness, President, National Partnership for Women and Families.
Nancy H. Nielsen, MD, PhD, Immediate Past President, American Medical Association.
Samuel R. Nussbaum, MD, Executive Vice President & Chief Medical Officer, WellPoint, Inc.
J. Marc Overhage, MD, PhD, Director of Medical Informatics, Regenstreif Institute.
Bernard M. Rosof, MD, Chair, Board of Trustees, Huntington Hospital.
Joseph R. Swedish, President and CEO, Trinity Health.
Curt Selquist (Chair, Leadership Network, *ex officio*), Johnson & Johnson Healthcare Systems, Inc. (retired).
John Tooker, MD, MBA, FACP, Executive Vice President and CEO, American College of Physicians.
Richard J. Umbdenstock, MS, FACHE, President and CEO, American Hospital Association.
Andrew Webber, President and CEO, National Business Coalition on Health.

Appendix C: Key NQF Staff Working Under the DHHS

Janet M. Corrigan, PhD, MBA, President and Chief Executive Officer.
Helen Burstin, MD, MPH, Senior Vice President for Performance Measures.
Floyd Eisenberg, MD, MPH, FACP, Senior Vice President for Health Information Technology.
Laura Miller, MPA, Senior Vice President and Chief Operating Officer.
Thomas Valuck, MD, MHSA, JD, Senior Vice President for Strategic Partnerships.
Karen Adams, PhD, Vice President of National Priorities.
Alicia C. Aebersold, Vice President of Communications.
Marybeth A. Farquhar, PhD, MSN, RN, Vice President for Performance Measures.
Lawrence D. Gorban, MA, Vice President of Operations.
Bruce Pelleu, CPA, Chief Financial Officer.
Peter B. Angood, MD, FRCS(C), FACS, FCCM, Senior Advisor, Patient Safety.
Alexis Forman, MPH, Program Director, Performance Measures.
Margaret Kay, Director of Publications.
Lindsay Lang, MHSA, RN, Program Director, Performance Measures.
Nicole Williams McElveen, MPH, Program Director, Performance Measures.
Karen Pace, PhD, RN, Senior Program Director.
Ashlie Wilbon, MPH, RN, Program Director, Performance Measures.

Appendix D: National Priorities Partnership

AAR
AFL–CIO
Agency for Healthcare Research and Quality
Aligning Forces for Quality
Alliance for Pediatric Quality
America's Health Insurance Plans
American Board of Medical Specialties
American Health Care Association
American Nurses Association
AQA
Centers for Disease Control and Prevention
Centers for Medicare & Medicaid Services
Certification Commission for Health Information Technology
Consumers Union
Hospital Quality Alliance
Institute for Healthcare Improvement
Institute of Medicine
Johnson & Johnson
Leapfrog Group
National Association of Community Health Centers
National Business Group on Health
National Committee for Quality Assurance
National Governors Association
National Institutes of Health
National Partnership for Women & Families
National Quality Forum
Pacific Business Group on Health
Physician Consortium for Performance Improvement convened by the American Medical Association
PQA
Quality Alliance Steering Committee
The Joint Commission
U.S. Chamber of Commerce

Notes

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[2] Medicare Improvements for Patients and Providers Act (Pub. L. 110–275). Available online at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h6331enr.txt.pdf.* Last accessed December 2009.

[3] National Priorities Partnership (NPP). Available online at *http://www.nationalprioritiespartnership.org/.* Last accessed December 2009.

[4] NPP. *National Priorities & Goals: Aligning Our Efforts to Transform America's Healthcare.* Washington, DC: National Quality Forum (NQF); 2008.

[5] NQF. *Policy Brief: HITEP II.* Issue Brief No. 17; October 2009. Washington, DC: NQF; 2009.

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[8] National Technology Transfer and Advancement Act of 1998 (Pub. L. 104–113). Available online at *http://ts.nist.gov/standards/information/113.cfm.* Last accessed December 2009.

[9] U.S. Office of Management and Budget. Circular No. A–119, February 10, 1998.

Available online at *http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html.* Last accessed December 2009.

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[11] NQF. *National Voluntary Consensus Standards for Hospital Care: An Initial Performance Measure Set.* Washington, DC: NQF; 2003.

[12] Hospital Quality Alliance: Improving Care Through Information. Available online at *http://www.hospitalqualityalliance.org/.* Last accessed December 2009.

[13] Hospital Quality Compare—A quality tool provided by Medicare. Available online at *www.HospitalCompare.hhs.gov.* Last accessed December 2009.

[14] NQF. *Serious Reportable Events in Healthcare: A Consensus Report.* Washington, DC: NQF; 2002.

[15] NQF. *Safe Practices for Better Healthcare: A Consensus Report.* Washington, DC: NQF; 2003.

IV. Secretarial Comments on the Annual Report to Congress

The Secretary is pleased with the scope and vision of NQF's March 2010 annual report. An internal multidisciplinary cross-component HHS team is working collaboratively with NQF to ensure a clear multi-year vision to ensure the most efficient and effective utilization of the HHS contract. The contract with this consensus-based entity, NQF, provides a unique opportunity to further enhance HHS' efforts to foster a collaborative, multi-stakeholder approach to increase the availability of national voluntary consensus standards for quality and efficiency measures to ensure broad transparency in achieving value in health care delivery.

Over the past year NQF began work on several tasks outlined in the Statement of Work, including: Development of a national strategy for performance measurement and prioritization of measures for development and endorsement; an evaluation of NQF's consensus development process; several measure endorsement projects focused on measure gap areas such as outcomes measures and patient safety measures; maintenance of currently NQF-endorsed measures; promotion of Electronic Health Records through such activities as the development of the "E-measure" and the retooling of a subset of existing NQF-endorsed measures into E-measure format; development of a public website to make available current NQF activities; endorsement of efficiency and resource use measures. The Secretary is pleased with the progress and timeliness of the work outlined in the Annual Report.

V. Future Steps

The consensus based contract with NQF is a four year contract. During the first full performance year of the contract, NQF completed deliverables for each task. HHS will continue to task NQF with single year and multi-year projects.

Formulation of National Strategy and Priorities for Health Care Performance Measurement

During March 2009 to February 2010, NQF created a framework for measurement prioritization by conducting an environmental scan of, at a minimum, the 20 patient conditions that account for over 95% of costs to the Medicare program. NQF established a steering committee to oversee the prioritization process and to consider additional measurement streams (*e.g.* population health, child health, Health IT) in its prioritization process.

Consensus Development Process for Measure Endorsement

During March 2009 to February 2010, NQF established steering committees to consider endorsement of outcomes measures in 3 phases. The first 2 phases will endorse outcomes measures for patients with Medicare high priority conditions. The third phase will endorse outcomes measures for mental health and for children. Future steps also include the endorsement of measures for patients in Nursing Homes as well as Patient Safety measures.

Maintenance of Consensus Endorsed Measures

During March 2009 to February 2010, NQF maintained endorsed measures relevant to HHS-wide programs and will be maintaining consensus-based endorsed measures as developed under the priority process.

Promotion of Electronic Health Records

During March 2009 to February 2010, NQF supported the promotion of electronic health records as part of HHS-wide efforts. NQF developed the Health Quality Measure Format (HQMF, or "E-measure"), began the retooling process to convert a sub-set of currently endorsed measures into E–Measure format, and supported the HIT Standards Panel in developing code lists and vocabulary standards for the transition to performance measurement through Electronic Health Records. Future steps include the retooling of the remaining subset of currently endorsed measures, the development of a measure authoring tool for creating E-measures, and to support clinical decision support systems for measuring and reporting performance. NQF will also support the selection of performance measures for the Meaningful Use of electronic health records.

Focused Measure Development, Harmonization, and Endorsement Efforts To Fill Critical Gaps in Performance Measurement

During March 2009 to February 2010, NQF supported a variety of performance measurement efforts including, but not limited to, the areas of efficiency, harmonization, outcomes, patient safety, care coordination, ICD–10, palliative care, and nursing home quality metrics.

The public is encouraged to give input through the NQF process and will be able to track the progress on work related to this contract on the NQF Web site located at: *http://www.qualityforum.org/projects/ongoing/hhs/.*

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Dated: October 15, 2010.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2010–26795 Filed 10–21–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From BWX Technologies Inc., Lynchburg, VA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from BWX Technologies, Inc., Lynchburg, Virginia, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: BWX Technologies, Inc.

Location: Lynchburg, Virginia.

Job Titles and/or Job Duties: All Atomic Weapons Employer employees.

Period of Employment: January 1, 1985 through November 30, 1994.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–26558 Filed 10–21–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2088–92, CMS–10054, CMS–10102 and CMS–10358]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Outpatient Rehabilitation Provider Cost Report utilized by Community Mental Health Centers; *Use:* In accordance with sections 1815, 1833 and 1861 of the Social Security Act, providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. In addition, 42 CFR 413.20(b) requires that cost reports will be required from providers on an annual basis. Such cost reports are required to be filed with the provider's Fiscal Intermediary (FI)/ Medicare Administrative Contractor (MAC).

The FI/MAC uses the cost report not only to make settlement with the provider for the fiscal period covered by the cost report, but also in deciding whether to audit the records of the provider. *Form Number:* CMS–2088–92 (OMB#: 0938–0037); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 596; Total *Annual Responses:* 596; *Total Annual Hours:* 59,600. (For policy questions regarding this collection contact Jill Keplinger at 410–786–4550. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Recognition of Payment for New Technology Ambulatory Payment Classification (APC) Groups under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR, Part 419; *Use:* In the April 7, 2000 final rule first implementing the hospital outpatient prospective payment system (OPPS), we created a set of New Technology ambulatory payment classifications (APCs) to pay for certain new technology services under the OPPS. These APCs are intended to pay for new technology services that were not covered by the transitional pass-through payments provisions authorized by the Balanced Budget Refinement Act (BBRA) of 1999. Both the New Technology APC provision and the transitional pass-through provisions provide ways for ensuring appropriate payment for new technologies for which the use and costs are not adequately represented in the base year claims data on which the outpatient PPS is constructed.

CMS needs to keep pace with emerging new technologies and make them accessible to Medicare beneficiaries in a timely manner. It is necessary that we continue to collect appropriate information from interested parties such as hospitals, medical device manufacturers, pharmaceutical companies and others that bring to our attention specific services that they wish us to evaluate for New Technology APC payment. We are making no changes to the information that we collect. The information that we seek to continue to collect is necessary to determine whether certain new services are eligible for payment in New Technology APCs, to determine appropriate coding and to set an appropriate payment rate for the new technology service. The intent of these provisions is to ensure timely beneficiary access to new and appropriate technologies. *Form Number:* CMS–10054 (OMB#: 0938–0860); *Frequency:* Annually; *Affected Public:* Private sector business or other for-profits; *Number of Respondents:* 15; Total *Annual Responses:* 15; *Total Annual Hours:* 180. (For policy questions regarding this collection contact Christina Smith Ritter at 410–786–4636. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* National Implementation of Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS); *Use:* The HCAHPS (Hospital Consumer Assessment of Healthcare Providers and Systems) survey is the first national, standardized, publicly reported survey of patients' perspectives of hospital care, also known as the CAHPS® Hospital Survey. The HCAHPS is a survey instrument and data collection methodology for measuring patients' perceptions of their hospital experience. While many hospitals have collected information on patient satisfaction for their own internal use, until HCAHPS there was no national standard for collecting and publicly reporting information about patient experience of care that allowed valid comparisons to be made across hospitals locally, regionally and nationally.

Publicly reported HCAHPS results are based on four consecutive quarters of patient surveys. CMS publishes participating hospitals' HCAHPS results on the Hospital Compare Web site four times a year, with the oldest quarter of patient surveys rolling off as the most recent quarter rolls on. Three broad goals have shaped HCAHPS. First, the survey is designed to produce comparable data on the patient's perspective on care that allows objective and meaningful comparisons between hospitals on domains that are important to consumers. Second, public reporting of the survey results is designed to create incentives for hospitals to improve their quality of care. Third, public reporting serves to enhance public accountability in health care by increasing the transparency of the quality of hospital care provided in return for the public investment. With these goals in mind, the HCAHPS project has taken substantial steps to assure that the survey is credible, useful, and practical. This methodology and the information it generates are made available to the public. *Form Number:* CMS–10102 (OMB#: 0938–0981); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and not-for-profit institutions; and individuals or households; *Number of Respondents:* 2,483,775; Total *Annual Responses:* 2,480,000; *Total Annual Hours:* 289,342. (For policy questions regarding this collection contact William Lehman at 410–786–1037. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicaid Management Information System Advanced Planning Document Template for Use by States When Implementing the Mandatory National Correct Coding Initiative in Medicaid, SMD Letter #10–017 dated September 1, 2010. *Use;* The Patient Protection and Affordable Care Act (Affordable Care Act) requires implementation of Section 6507, Mandatory State Use of National Correct Coding Initiative (NCCI). A State Medicaid Director letter, #10–017 dated September 1, 2010 was published with implementation requirements for provision 6507. The letter stated that a Medicaid Management Information System (MMIS) Advanced Planning Document (APD) template is required for States to request Federal financial participation (FFP) funding for implementing the provision and is also the tool for requesting deactivation of edits, due to direct conflicts with State laws, regulations, administrative rules, or payment policies. CMS has developed an MMIS–APD template specific to NCCI for State convenience. The MMIS APD template supporting implementation of the NCCI in the Medicaid program will be submitted by States to the Regional Offices for review and to CMS Central Office for review and approval. The information requested on the MMIS APD template for NCCI will be used to determine and approve FFP to States. *Form Number:* CMS–10358 (OMB#: 0938–0New); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 55; *Total Annual Responses:* 56; *Total Annual Hours:* 56. (For policy questions regarding this collection contact Richard Friedman at 410–786–4451. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *December 21, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 18, 2010.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–26519 Filed 10–21–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Affordable Care Act Tribal Maternal, Infant, and Early Childhood Home Visiting Program Needs Assessment and Plan for Responding to Identified Needs.

OMB No.: New Collection.

Description: Section 511(h)(2)(A) of Title V of the Social Security Act, as added by Section 2951 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, Affordable Care Act or ACA), authorizes the Secretary of HHS to award grants to Indian Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations to conduct an early childhood home visiting program. The legislation sets aside 3 percent of the total ACA Maternal, Infant, and Early Childhood Home Visiting Program appropriation (authorized in Section 511(j)) for grants to Tribal entities and requires that the Tribal grants, to the greatest extent practicable, be consistent with the requirements of the Maternal, Infant, and Early Childhood Home Visiting Program grants to States and territories (authorized in Section 511(c)), and include conducting a needs assessment and establishing benchmarks.

The Administration for Children and Families, Office of Child Care, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, recently awarded grants for the Tribal Maternal, Infant, and Early Childhood Home Visiting Program (Tribal Home Visiting). The Tribal Home Visiting grant awards will support 5-year cooperative agreements to conduct community needs assessments, plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk Tribal communities, and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

In Phase 1 (Year 1) of the cooperative agreement, grantees must (1) conduct a comprehensive community needs assessment and (2) develop a plan and begin to build capacity to respond to identified needs. Grantees will be expected to submit the needs assessment and plan for responding to identified needs through an evidence-based home visiting program within 10 months of the Year 1 award date. Grantees may engage in needs assessment, planning, and capacity-building activities during Phase 1, but will not fully implement their plan and/or begin serving children and families through high-quality, evidence-based home visiting programs. Pending successful Phase 1 activities and submission (within 10 months of Year 1 award date) of a non-competing continuation application that includes a needs assessment and approvable plan for responding to identified needs, funds will be provided for Phase 2 (Implementation Phase, Years 2–5).

Respondents: Affordable Care Act Tribal Maternal, Infant, and Early Childhood Home Visiting Program Year 1 Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Affordable Care Act Tribal Maternal, Infant, and Early Childhood Home Visiting Program Needs Assessment and Plan for Responding to Identified Needs	18	1	100	1,800

Estimated Total Annual Burden Hours: 1,800.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 18, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–26560 Filed 10–21–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Social Services Block Grant Post-Expenditure Report.

OMB No.: 0970–0234.

Description: The purpose of this information collection is to (1) extend the collection of post-expenditure data using the current OMB approved reporting form (OMB No. 0970–0234) past the current expiration date of July 31, 2011; (2) make one change to the current post-expenditure reporting form; and (3) request that States voluntarily use the post-expenditure reporting form to estimate expenditures and recipients, by service category, as part of the required annual intended use plan. The Social Services Block Grant program (SSBG) provides funds to assist States in delivering critical services to vulnerable older adults, persons with disabilities, at-risk adolescents and young adults, and children and families. Funds are allocated to the States in proportion to their populations. States have substantial discretion in their use of funds and may determine what services will be provided, who will be eligible, and how funds will be distributed among the various services. State or local SSBG agencies (i.e., county, city, regional offices) may provide the services or may purchase them from qualified agencies, organizations or individuals. States report as recipients of SSBG-funded services any individuals who receive a service funded in whole or in part by SSBG. States are required to report their annual SSBG expenditures on a standard post-expenditure reporting form. The current form includes a yearly total of adults and children served and annual expenditures in each of 29 service categories. The annual report is submitted within six months of the end of the period covered by the report, and must address: (1) The number of individuals (including number of children and number of adults) who receive services paid for, in whole or in part, with Federal funds under the SSBG; (2) the amount of SSBG funds spent in providing each service; (3) the total amount of Federal, State, and local funds spent in providing each service, including SSBG funds; and (4) the method(s) by which each service is provided, showing separately the services provided by public and private agencies. These reporting requirements can be found at 45 CFR 96.74. Information collected on the post-expenditure report is analyzed and described in an annual report on SSBG expenditures and recipients produced by the Office of Community Services (OCS), Administration for Children and Families (ACF). The information contained in this report is used for program planning and management. The data establish how SSBG funding is used for the provision of services in each State to each of many specific populations of needy individuals.

Federal regulation and reporting requirements for the SSBG also require each State to develop and submit an annual intended use plan that describes how the State plans to administer its SSBG funds for the coming year. This report is to be submitted 30 days prior to the start of the fiscal year (June 1 if the State operates on a July-June fiscal year, or September 1 if the State operates on a Federal fiscal year). No specific format is required for the intended use plan. The intended use of SSBG funds, including the types of activities to be supported and the categories and characteristics of individuals to be served, must be provided. States vary greatly in the information they provide and the structure of the report. States are required to submit a revised intended use plan if the planned use of SSBG funds changes during the year. In order to provide a more accurate analysis of the extent to which funds are spent "in a manner consistent" with each of the State's plan for their use, as required by 42 U.S.C. 1397e(a), ACF is requesting that States voluntarily use the format of the post-expenditure report form to provide estimates of the amount of expenditures and the number of recipients by service category, that the State plans to use SSBG funds to support as part of the intended use plan. Many States are already doing this.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Use of Post-Expenditure Report Form as Part of the Intended Use Plan	56	1	2	112
Post-Expenditure Report	56	1	110	6,160

Estimated Total Annual Burden Hours: 6,272

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 18, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–26538 Filed 10–21–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–11–11AD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Surveys of State, Tribal, Local, and Territorial (STLT) Governmental Health Agencies—New—Office of the Director, Office for State, Tribal Local and Territorial Support (OSTLTS)–(proposed), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's mission includes addressing the leading causes of disease, injury, and disability in the United States, including a focus on tobacco control; improving nutrition, physical activity, and food safety; reducing healthcare-associated infections; preventing motor vehicle injuries; preventing teen pregnancy; and preventing HIV. CDC's priorities for approaching improvements to public health include—strengthening surveillance, epidemiology, and laboratory science; better supporting efforts in states and communities; and pursuing policies that have an impact. As such, CDC's relationship with State, local, tribal and territorial (STLT) governmental health officials is key to its emergency preparedness, health promotion and disease prevention responsibilities.

CDC is requesting a three-year approval for a generic clearance to assess information related to a myriad of public health issues that affect STLT health agencies. Information will be used to assess situational awareness of current public health emergencies, make decisions that will affect planning, response and recovery activities of subsequent emergencies, and fill gaps in knowledge that will strengthen surveillance, epidemiology, and laboratory science; better supporting efforts in states and communities. CDC will conduct short surveys, across a range of public health topics, using standard questionnaire administration approaches (*e.g.,* phone, web, e-mail, and paper, in person).

CDC estimates that it will conduct up to 50 of queries with State, territorial or tribal health officials, 12 queries with county health officials, and 4 of queries with municipal health officials each year. Ninety percent of queries will be web-based, with remaining in-person or paper-based surveys. The total annualized burden hours of 40,980 is based on the following estimates.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden hours
State, Territorial, or Tribal Health Officials	50	50	1	2,500
County Health Officials	1,600	12	2	38,400
Municipal/City Health Officials	20	4	1	80
Total				40,980

Dated: October 15, 2010.

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–26577 Filed 10–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10336]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506I(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare and Medicaid Programs; Electronic Health Record Incentive Program; *Use:* The American Reinvestment and Recovery Act of 2009 (Recovery Act) (Pub. L. 111–5) was enacted on February 17, 2009. The Recovery Act includes many measures to modernize our nation's infrastructure, and improve affordable health care. Expanded use of health information technology (HIT) and certified electronic health records (EHRs) will improve the quality and value of American health care. Title IV of Division B of the Recovery Act amends Titles XVIII and XIX of the Social Security Act (the Act) by establishing incentive payments to EPs, eligible hospitals, and CAHs to promote the adoption and meaningful use of interoperable HIT and EHRs. These provisions, together with Title XIII of Division A of the Recovery Act, may be cited as the "Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act." The incentive payments for adoption and meaningful use of HIT and certified EHRs are part of a broader effort under the HITECH Act to accelerate the adoption of HIT and utilization of certified EHRs.

The HITECH Act creates incentives for EPs and eligible hospitals, including CAHs, in the Medicare Fee-for-Service (FFS), Medicare Advantage (MA), and Medicaid programs that meaningfully use certified EHR technology, and payment adjustments in the Medicare FFS and MA programs starting in FY 2015 for EPs and eligible hospitals participating in Medicare that are not meaningful users of certified EHR technology.

In the final rule that published July 28, 2010 (75 FR 44314), CMS establishes the definition of "meaningful use of certified EHR technology" and describes the use of HIT to advance the goals of information exchange among healthcare professionals and hospitals. As required by section 3004(b)(l) of the Public Health Service Act (amended by section 13101 of the HITECH Act), the "certified EHR technology" with which to demonstrate "meaningful use" will be determined in a rulemaking document provided by the Office of the National Coordinator for Health Information Technology (ONC). The functionality of certified EHR technology should facilitate the implementation of meaningful use.

The information collection requirements contained in this information collection request are needed to implement the HITECH Act. In order to avoid duplicate payments, all EPs are enumerated through their NPI, while all eligible hospitals and CAHs will also be enumerated through their CCN. State Medicaid agencies and CMS will use the provider's TIN and NPI or CCN combination in order to make payment, validate payment eligibility and detect and prevent duplicate payments for EPs, eligible hospitals and CAHs. *Form Number:* CMS–10336 (OMB#: 0938–New); *Frequency:* Occasionally; *Affected Public:* State, Local and Tribal governments, Private Sector: Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 1,448,895 Total *Annual Responses:* 2,099,458; *Total Annual Hours:* 6,344,458. (For policy questions regarding this collection contact Rachel Maisler at 410–786–5754. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *November 22, 2010.* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: October 18, 2010.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–26516 Filed 10–21–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–11–10BU]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Case Studies of Communities and States Funded under Community Activities under the Communities Putting Prevention to Work Initiative—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Chronic diseases such as cancer, heart disease, and diabetes are among the leading causes of death and disability in the United States, but are among the most preventable health problems. Adopting healthy behaviors such as eating nutritious foods, being physically active and avoiding tobacco use can prevent or control the devastating effects of these diseases.

The American Recovery and Reinvestment Act of 2009 (ARRA) allotted $650 million to the Department of Health and Human Services (HHS) to support evidence-based prevention and wellness strategies. The cornerstone of the initiative is the Communities Putting Prevention to Work (CPPW) Community Program, administered by the Centers for Disease Control and Prevention (CDC). Through this program, all States and territories, and 44 communities, have received cooperative agreement funding to implement evidence-based community approaches to chronic disease prevention over a 24-month period. In September 2010, the initiative was expanded to include additional communities funded through a $34 million allotment from the Affordable Care Act. The long-term goals of the CPPW are to modify the environmental determinants of risk factors for chronic diseases, prevent or delay chronic diseases, promote wellness in children and adults, and provide positive, sustainable health change in communities.

Grantees are working with partners such as local and State health departments and agencies, health centers, schools, businesses, community and faith-based organizations, academic institutions, health care and mental health organizations, and others to create policies, systems, and environments that promote improvements in physical activity and nutrition, and decrease the prevalence of obesity and tobacco use. Each grantee has selected strategies for implementing change from five categories involving *m*edia, *a*ccess, *p*rice, *p*oint of purchase decision, and *s*upport services (MAPPS). These approaches were selected from a reference set of evidence-based strategies provided by CDC.

CDC proposes to collect information from a subset of CPPW States and communities to gain insight into the factors that facilitate or hinder implementation of the MAPPS strategies and effective creation of the desired policy, system, and environmental changes. Intensive case studies will be conducted with 24 sites: Six ARRA-funded CPPW States, 15 ARRA-funded CPPW communities, and three communities funded by the Affordable Care Act. The case study sites will be selected to include a mix of State or community characteristics related to population density, geographic region, and targeted population.

Information will be collected during personal interviews with an average of 20 respondents at each case study site. On average, each site's respondents will consist of the program director and one additional member of the site management team; four additional CPPW staff members; a mix of seven Community Partners, Leadership Team Members and implementers; and a mix of seven policy- and decision-makers. To obtain a variety of perspectives, respondents will include representatives of the private sector as well as representatives from the State and local government sector. The length of the interview and the questions asked will vary according to the type of respondent being interviewed. Three Interview Guide instruments have been developed to facilitate the case study interviews.

The interview scheduling process is also estimated to entail six hours of burden per site. Each site's program director will take about one hour to complete an Interview Planning Tool, and a CPPW staff member will devote approximately five hours to coordinating interviews and completing the final Worksheet for Scheduling Site Visit Interviews.

Participation is required for each case study site, however, participation in the interviews will be voluntary for individual respondents.

The case study information to be collected will assist the Federal government, State and local governments, and communities in planning future strategies designed to promote sustainable policy, systems and environmental changes that improve public health. As a result of the CPPW program, powerful models of success are expected to emerge that can be replicated in other States and communities.

OMB approval is requested for two years. Information will be collected at the beginning of the CPPW funding period and again approximately 18 months post-award. The total estimated annualized burden to respondents is 678 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
CPPW Project Management	Interview Planning Tool	24	1	1
	Interview Guide for Project Management and Staff.	48	1	2
CPPW Project Staff	Worksheet for Scheduling Site Visit Interviews.	24	1	5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
	Interview Guide for Project Management and Staff.	96	1	1.5
Community Partners, Leadership Team and Implementers (State and local govt.).	Interview Guide for Community Partners, Leadership Team and Implementers.	72	1	1
Community Partnership, Leadership Team and Implementers (private sector).	Interview Guide for Community Partners, Leadership Team and Implementers.	96	1	1
Policy/Decision Makers (State and local govt.).	Interview Guide for Policy/Decision Makers ..	48	1	45/60
Policy/Decision Makers (private sector)	Interview Guide for Policy/Decision Makers ..	120	1	45/60

Dated: October 18, 2010.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–26697 Filed 10–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–0768]

Proposed Agency Information Collection Act

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, Ph.D., CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The Outcomes Data Collection of the National Prevention Information Network, (OMB No. 0920–0768 Exp: 3/31/2011)—Extension with change—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NCHHSTP has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, viral hepatitis, sexually transmitted diseases (STDs), and tuberculosis (TB), as well as for community-based HIV prevention activities, syphilis, and TB elimination programs. NPIN serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, viral hepatitis, STDs, and TB, supporting NCHHSTP's mission to link Americans to prevention, education, and care services. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, viral hepatitis, STDs, and TB. NPIN provides the most comprehensive listing of HIV/AIDS, viral hepatitis, STD, and TB resources and services for prevention partners and the American public throughout the country and makes it available on the NPIN Web site. More than 29 million hits to the Web site are recorded annually.

To accomplish CDC's goal of consistently improving NPIN's Web site, and NPIN's other products and services, and meet the ever-growing needs of the the prevention professionals, prevention partners, and the general public, it is necessary to collect feedback from visitors to the NPIN Web site and the users of NPIN's products and services on an on-going basis. Every effort has been made to minimize the burden on prevention professionals and the general public.

This request is for 3-years. The evaluation will be accomplished by survey data collection from two groups—users of the NPIN Web site and users of NPIN products and services. Respondents for each survey will include representatives from government agencies, community-based organizations, advocacy organizations, various other organizations involved in the prevention and/or treatment of HIV/AIDS, STDs, TB, and/or viral hepatitis, and the general public. The NPIN Web site user survey will be conducted on an ongoing basis via the Web site and a blast e-mail reminder will be sent out annually. The NPIN products and services user survey will be conducted on a bi-annual basis with a blast e-mail sent out every 6 months. When appropriate, NPIN will distribute the surveys at conferences and via social networks. Some of the NPIN Web site user surveys and the NPIN products and services surveys will be conducted over the phone as needed, which will be kept to an absolute minimum.

The information collected from the surveys is not intended to provide statistical data for publication. The purpose of this activity is solely to obtain user feedback that will help identify opportunities to improve the services and products provided to the public by NPIN and to ultimately allow NPIN to fulfill its mission. Approval of this information collection request will allow PIN to acquire accurate, up-to-date information from users of the NPIN Web site, and other products and services on a regular basis and in a timely manner. This data collection will also help the NPIN team to identify the service needs of NPIN users and implement new features to meet those needs. The data collected will help to identify the strengths and weaknesses of the NPIN Web site, and other products and services. This process also ensures collecting data using a consistent format and complies with requirements under the Public Health Service Act, Executive Order 12862, and GPRA. Ultimately, the data collected will enable the NPIN team to provide the highest quality products and services to NPIN users.

Without this information collection, CDC will be hampered in successfully carrying out its mission of providing quality products and services to populations served. Failure to continue with the data collection effort would compromise efforts to meet the legislative requirement of being as responsive as possible to the public who consistently seek information about the prevention and treatment of HIV/AIDS, STDS, TB, and viral hepatitis. Moreover, it would diminish NPIN's value to the public in terms of usability and credibility as a comprehensive Federal information and education resource. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
NPIN Web site User Survey	500	1	15/60	125
Online NPIN Products and Services User Survey	475	2	13/60	206
NPIN Products and Services, Phone User Survey	25	2	13/60	11
Total	1000	5	....	342

Dated: October 18, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–26696 Filed 10–21–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Notice of Interstate Lien.

OMB No.: 0970–0153.

Description: Section 452(a)(11) of the Social Security Act requires the Secretary of Health and Human Services to promulgate a form for imposition of liens to be used by the State child support enforcement (Title IV–D) agencies in interstate cases. Section 454(9)(E) of the Social Security Act requires each State to cooperate with any other State in using the Federal form for imposition of liens in interstate child support cases. Tribal IV–D agencies are not required to use this form but may choose to do so. OMB approval of this form is expiring in February 2011 and the Administration for Children and Families is requesting an extension of this form.

Respondents: State, local or Tribal agencies administering a child support enforcement program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Notice of Lien	1,832,384	1	0.25	458,096

Estimated Total Annual Burden Hours: $458,096.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project. Fax: 202–395–7285. E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Dated: October 19, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–26694 Filed 10–21–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Office of Urban Indian Health Programs; Uniform Data System

AGENCY: Indian Health Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3507 of the Paperwork Reduction Act of 1995, which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget

(OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (74 FR 59544) on November 18, 2009 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: Office of Urban Indian Health Programs (OUIHP) Uniform Data System (UDS). *Type of Information Collection Request:* Initial request and four-year extension, for data collection to ensure compliance with legislative mandates and report to Congress and policymakers on program accomplishments. *Form Number(s):* There are currently no form numbers. Reporting formats are contained in the UDS Instruction Manual. *Need and Use of Information Collection:* The UDS contains the annual reporting requirements for the cluster of primary health care and case management/outreach and referral grantees funded by the IHS. The UDS includes reporting requirements for grantees of the OUIHP. The authorizing statute is Title V of Public Law 94–437, of the Indian Health Care Improvement Act, as amended. IHS will collect data in the UDS which will be used to ensure compliance with the legislative mandates and report to Congress and policymakers on program accomplishments. To meet these objectives, the OUIHP requires a core set of data collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. *Affected Public:* Title V funded urban Indian health programs. *Type of Respondents:* Title V urban Indian health programs.

The table below provides: Types of data collection instruments, Number of respondents, Responses per respondent, Total annual responses, Average burden hours per response, and Total annual burden hours.

Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual responses	Average burden hours per response*	Total annual burden hours
Universal Report	34	1	34	8.00 (480 min)	272
American Indian/Alaska Native Report	34	1	34	8.00 (480 min)	272
Total	68				544

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, Attention: Desk Officer for IHS, New Executive Office Building, Room 10235, Washington, DC 20503.

Send Comments and Requests for Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Hershel Gorham, Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852; call non-toll free (301) 443–4792; send via facsimile to (301) 443–9879; or send your e-mail requests, comments, and return address to: *hershel.gorham@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: October 7, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–26429 Filed 10–21–10; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Interstate Administrative Subpoena.

OMB No.: 0970–0152.

Description: Section 452(a)(11) of the Social Security Act requires the Secretary of the Department of Health and Human Services to promulgate a form for administrative subpoenas to be used in State child support enforcement programs to collect information for use in the establishment, modification and enforcement of child support orders in interstate cases. Section 454(9)(E) of the Social Security Act requires each State to cooperate with any other State in using the Federal form for issuance of administrative subpoenas in interstate child support cases. Tribal IV–D agencies are not required to use this form but may choose to do so. OMB approval of this form is expiring in February 2011 and the Administration for Children and Families is requesting an extension of this form.

Respondents: State, local or Tribal agencies administering a child support enforcement program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Administrative Subpoena	35,286	1	0.50	17,643

Estimated Total Annual Burden Hours: 17,643

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: October 19, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–26693 Filed 10–21–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of availability—revised and enhanced event-specific common format.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. As authorized by the Secretary of HHS, AHRQ coordinates the development of a set of common definitions and reporting formats (Common Formats) that allow healthcare providers to voluntarily collect and submit standardized information regarding patient safety events. The purpose of this notice is to announce the availability of a significant revision of a previously released Common Format for public review and comment.

DATES: Ongoing public input.

ADDRESSES: The revised Device or Medical/Surgical Supply including Health Information Technology (HIT) Device format and the remaining Common Formats Version 1.1 can be accessed electronically at the following HHS Web site: *http://www.PSO.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Deborah Perfetto, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, and other healthcare providers may voluntarily report information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called "patient safety work product"—is privileged and confidential. Patient safety work product is used to identify events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Rule.

The Patient Safety Act and Patient Safety Rule require PSOs, to the extent practical and appropriate, to collect patient safety work product from providers in a standardized manner in order to permit valid comparisons of similar cases among similar providers. The collection of patient safety work product allows the aggregation of sufficient data to identify and address underlying causal factors of patient safety problems. Both the Patient Safety Act and Patient Safety Rule can be accessed electronically at: *http://www.PSO.AHRQ.gov/requlations/regulations.htm.*

In order to facilitate standardized data collection, the Secretary of HHS authorized AHRQ to develop and maintain the Common Formats to improve the safety and quality of healthcare delivery. In August 2008, AHRQ issued the initial release of the formats, Version 0.1 Beta. The second release of the Common Formats, Version 1.0, was announced in the **Federal Register** on September 2, 2009: 74 FR 45457–45458. This release was later replaced by Version 1.1, as announced in the **Federal Register** on March 31, 2010: 75 FR 16140–16142.

Version 1.1 includes updated event descriptions, forms, and technical specifications for software developers.

Definition of Common Formats

The term "Common Formats" is used to describe clinical definitions and technical requirements developed for the uniform collection and reporting of patient safety data, including all supporting material. The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research-related reporting system, or other reporting/recording system.

The scope of Common Formats applies to all patient safety concerns including:

○ Incidents—patient safety events that reached the patient, whether or not there was harm,

○ Near misses or close calls—patient safety events that did not reach the patient, and

○ Unsafe conditions—circumstances that increase the probability of a patient safety event.

Common Formats Version 1.1 is currently limited to patient safety reporting for acute care hospitals and is designed to support the first stage in the improvement cycle. Version 1.1 includes two general types of formats, generic and event specific. The generic Common Formats pertain to all patient safety concerns. The three generic formats are: Healthcare Event Reporting Form, Patient Information Form, and Summary of Initial Report. The event-specific Common Formats pertain to frequently occurring and/or serious patient safety events. The eight event-specific formats are: Blood or Blood Product, Device or Medical/Surgical Supply, Fall, Healthcare-Associated Infection, Medication or Other Substance, Perinatal, Pressure Ulcer, and Surgery or Anesthesia.

As part of the Agency's efforts to continually refine and update the formats, AHRQ has issued a significant revision of the previously released Common Format—Device or Medical/Surgical Supply. In conjunction with the Food and Drug Administration (FDA) and the Office of the National Coordinator for Health Information Technology (ONC), AHRQ developed the beta version of this event-specific format to capture information about patient safety events that are related to HIT. Subsequently, the format was reviewed and revised by an interagency Federal Patient Safety Work Group (PSWG). The enhanced format, Device or Medical/Surgical Supply including HIT Device, will be incorporated into the next version of the Common Formats (Version 1.2).

This revised format includes a description of patient safety events and unsafe conditions to be reported (event description) and a sample patient safety aggregate report and individual event summary. The Device or Medical/Surgical Supply including HIT Device Common Format is available at the Patient Safety Organization (PSO) Privacy Protection Center (PPC) Web site: *https://www.psoppc.org/web/patientsafety.*

Commenting on Device or Medical/Surgical Supply Including HIT Device Common Format, Version 1.1

To allow for greater participation by the private sector in the subsequent development of the Common Formats, AHRQ engaged the National Quality Forum (NQF), a non-profit organization focused on health care quality, to solicit comments and advice to guide the further refinement of the Common Formats. The NQF began this process with feedback on AHRQ's 0.1 Beta release of the Common Formats. Based upon the expert panel's feedback, AHRQ, in conjunction with the PSWG, further revised and refined the Common Formats and released Version 1.0.

The review process above was repeated again from September 2009 through February 2010 to further refine Common Formats Version 1.0 and incorporate public comments prior to finalization of the technical specifications for electronic implementation. These revised formats are now available as Version 1.1.

As evidenced by the release of this Device or Medical/Surgical Supply including HIT Device format, AHRQ is committed to continuing refinement of the Common Formats. The Agency is specifically interested in obtaining feedback from both the private and public sectors, particularly from those who use the Common Formats, to guide their improvement. Information on how to comment and provide feedback on the Common Formats, Version 1.1 and the Device or Medical/Surgical Supply including HIT Device beta version, is available at the National Quality Forum (NQF) Web site for Common Formats: *http://www.Quality.forum.org/projects/commonformats.aspx.*

Common Formats Development

In anticipation of the need for Common Formats, AHRQ began their development in 2005 by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provides an evidence base that informs construction of the Common Formats. The inventory now numbers 69 and includes many systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (*e.g.,* from the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems are included, such as those from the Centers for Disease Control and Prevention (CDC), FDA, the Department of Defense (DOD), and the Department of Veterans Affairs (VA).

Since February 2005, AHRQ has coordinated the PSWG to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies within the HHS–CDC, Centers for Medicare & Medicaid Services, FDA, Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health, the National Library of Medicine, ONC, the Office of Public Health and Science, the Substance Abuse and Mental Health Services Administration—as well as the DoD and the VA.

The PSWG assists AHRQ with assuring the consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues. To the extent practicable, the Common Formats are also aligned with World Health Organization (WHO) concepts, framework, and definitions contained in their draft International Classification for Patient Safety (ICPS).

The process for updating and refining the formats will continue to be an iterative one. More information on the Common Formats Version 1.1 can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.qov/index.html.*

Dated: October 12, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–26667 Filed 10–21–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2326–PN]

Medicare and Medicaid Programs; Application by the Joint Commission for Deeming Authority for Psychiatric Hospitals

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

ACTION: Proposed notice.

SUMMARY This proposed notice with comment period acknowledges the receipt of an application from the Joint Commission for recognition as a national accrediting organization for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs. Section 1865(a)(3)(A) of the Social Security Act requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 22, 2010.

ADDRESSES: In commenting, please refer to file code CMS–2326–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2326–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2326–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: L. Tyler Whitaker, (410) 786–5236. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2326–PN and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a psychiatric hospital provided certain requirements are met. Section 1861(f) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482, subpart E specify, among other things, the conditions that a psychiatric hospital must meet in order to participate in the Medicare program.

Generally, in order to enter into a provider agreement with the Medicare program, a psychiatric hospital must first be certified by a State survey agency as complying with the applicable conditions or requirements set forth in 42 CFR part 482. Thereafter, the psychiatric hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. However, there is an alternative to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under 42 CFR part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions of participation. The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every 6 years or sooner as determined by us.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and the ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the Joint Commission's request for deeming authority for psychiatric hospitals. This notice also solicits public comment on whether the Joint Commission's requirements meet or exceed the

Medicare conditions for participation for psychiatric hospitals.

III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for approval as a deeming organization for psychiatric hospitals. This application was determined to be complete on September 3, 2010. Under section 1865(a)(2) of the Act and § 488.8 (Federal review of accrediting organizations), our review and evaluation of the Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the Joint Commission's standards for a psychiatric hospital as compared with CMS' psychiatric hospital conditions of participation.
- The Joint Commission's survey process to determine the following:
  + The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  + The comparability of the Joint Commission's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  + The Joint Commission's processes and procedures for monitoring psychiatric hospitals found out of compliance with the Joint Commission's program requirements. These monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).
  + The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  + The Joint Commission's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.
  + The adequacy of the Joint Commission's staff and other resources, and its financial viability.
  + The Joint Commission's capacity to adequately fund required surveys.
  + The Joint Commission's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
  + The Joint Commission's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant effect on the rights of States, local or Tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 14, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–26716 Filed 10–21–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Oncologic 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: Oncologic 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 December 1, 2010, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Bldg 31, the Great Room, White Oak Conference Center (rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading "Resources for You", click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings".

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *Nicole.vesely@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 301–451–2542. 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 December 1, 2010, the committee will discuss supplemental new drug applications (sNDAs) 021–319/S–024, trade name AVODART (dutasteride) Soft Gelatin Capsules, manufactured by SmithKline Beecham Corp. d/b/a (doing business as) GlaxoSmithKline and 020–180/S–034, trade name PROSCAR (finasteride) Tablets, manufactured by Merck & Co., Inc. The proposed indication (use) for AVODART (dutasteride) is for reduction in the risk of prostate cancer in men at increased risk of developing the disease. The population at increased risk of prostate cancer includes men with an elevated serum prostate-specific antigen (PSA) or men otherwise determined to be at increased risk based on other associated risk factors such as age, race, and family history. There is no proposed expansion of the indication for PROSCAR (finasteride); however, in light of the Prostate Cancer Prevention Trial (PCPT) which demonstrated a statistically significant reduction in the 7-year period prevalence of prostate cancer with finasteride (PROSCAR) treatment, and which reported an imbalance in high Gleason grade prostate cancers (indicating more aggressive cancers) in the finasteride treatment arm vs. placebo, the efficacy and safety of both products for use in prostate cancer risk reduction will be examined.

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 November 16, 2010. Oral presentations from the public will be scheduled between approximately 2:30 p.m. to 3:30 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 November 8, 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 November 9, 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 Nicole Vesely 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: October 13, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–26651 Filed 10–21–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Basic Behavioral and Social Science Opportunity Network (OppNet)

ACTION: Notice.

SUMMARY: A two-day meeting highlighting OppNet's activities and future goals is scheduled for Thursday, October 28, and Friday, October 29, 2010, at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington DC 20001. This is the first public meeting to promote and publicize the Basic Behavioral and Social Science Opportunity Network (OppNet) initiative. Attendance is limited to prior registration via *http://www.regonline.com/oppnet.*

Background: The Basic Behavioral and Social Science Opportunity Network (OppNet) is a trans-NIH initiative to expand the agency's funding of basic behavioral and social sciences research (b-BSSR). OppNet prioritizes activities and initiatives that focus on basic mechanisms of behavior and social processes that are relevant to the missions and public health challenges of multiple NIH Institutes, Centers, and Offices (ICOs) and that build upon existing NIH investments without replicating them. *http://www.oppnet.nih.gov.*

Participating: The meeting will take place on October 28, from 9 a.m. to 4:30 p.m., and October 29, from 8:30 a.m. to 2:30 p.m., at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington DC 20001.

FOR FURTHER INFORMATION CONTACT: To register, visit the registration Web site at *http://regonline.com/oppnet,* call William Elwood at 301–402–0116, or e-mail *elwoodwi@od.nih.gov.*

Dated: October 15, 2010.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2010–26709 Filed 10–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 Institute of General Medical Sciences Special Emphasis Panel; Review of Minority Biomedical Research Neuro Grant Applications.

Date: December 6, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency-Bethesda, 7400 Wisconsin Avenue, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26708 Filed 10–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; EDRN Biomarker Development Labs (U01) J1.

Date: November 2, 2010.

Time: 8 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 116 Executive Blvd., Room 8146, Rockville, MD 20852 (Teleconference Meeting).

Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8146, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; EDRN Biomarker Development Labs (U01) J2.

Date: November 2, 2010.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Blvd., Room 8146, Rockville, MD 20852 (Teleconference Meeting).

Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8146, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; EDRN Biomarker Development Labs (U01) J3.

Date: November 2, 2010.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Blvd., Room 8146, Rockville, MD 20852 (Teleconference Meeting).

Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8146, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 18, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26706 Filed 10–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Institute of Environmental Health Sciences Special Emphasis Panel; Conferences and Scientific Meetings Support.

Date: November 16, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26704 Filed 10–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Epitope Mapping Technologies.

Date: December 14, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Thomas M Vollberg, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 18, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26702 Filed 10–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Genetics of Nephropathy Ancillary Studies.

Date: November 15, 2010.

Time: 10:15 a.m. to 11:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7791. *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Consortium for Radiologic Imaging Studies in Polycystic Kidney Disease (CRISP).

Date: November 23, 2010.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7791. *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 18, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26717 Filed 10–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences;

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: Environmental Health Sciences Review Committee; Research Career Programs.

Date: November 1, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: Environmental Health Sciences Review Committee; National Research Service Award.

Date: November 2, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation-Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26711 Filed 10–21–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0062]

Disaster Temporary Housing Operational Guide

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the Disaster Temporary Housing Operational Guide.

DATES: Comments must be received by November 22, 2010.

ADDRESSES: Comments must be identified by docket ID FEMA–2010–0062 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed operational guide is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Office of Chief Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–212–1000.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: 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, which can be viewed by clicking on the "Privacy Notice" link in the footer of *http://www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed operational guide is available in docket ID FEMA–2010–0062. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 840, 500 C Street, SW., Washington, DC 20472.

II. Background

The proposed Disaster Temporary Housing Operational Guide builds on previous annual Disaster Housing Plans to present a comprehensive picture of FEMA housing assistance and housing support. The goal of this document is to help FEMA's partners understand FEMA programs and capabilities and to help establish stakeholder expectations.

The proposed operational guide does not have the force or effect of law.

FEMA seeks comment on the proposed operational guide, which is available online at *http://www.regulations.gov* in docket ID FEMA–2010–0062. Based on the comments received, FEMA may make appropriate revisions to the proposed operational guide. Although FEMA will consider any comments received in the drafting of the final operational guide, FEMA will not provide a response to comments document. When or if FEMA issues a final operational guide, FEMA will publish a notice of availability in the **Federal Register** and make the final operational guide available at *http://www.regulations.gov.* The final operational guide will not have the force or effect of law.

Authority: 42 U.S.C. 5170b; 42 U.S.C. 5174; 44 CFR part 206.

Robert Farmer,

Deputy Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–26705 Filed 10–21–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0063]

Recovery Policy RP9524.2, Landslides and Slope Stability Related to Public Facilities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: This document provides notice of the final Recovery Policy RP9524.2, *Landslides and Slope Stability Related to Public Facilities,* which is being issued by the Federal Emergency Management Agency (FEMA).

DATES: This policy is effective October 8, 2010.

ADDRESSES: This final policy is available online at *http://www.regulations.gov* under docket ID FEMA–2010–0063 and on FEMA's Web site at *http://www.fema.gov.* You may also view a hard copy of the final policy at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Byron Mason, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, phone 202–646–4368, e-mail *Byron.Mason@dhs.gov.*

SUPPLEMENTARY INFORMATION: This policy determines the eligibility of emergency work to protect eligible facilities threatened by landslides or slope failures; as well as the eligibility of permanent repairs to eligible facilities damaged by landslides or slopes that failed during an event that resulted in a Presidentially-declared emergency or major disaster.

Authority: 42 U.S.C. 5121–5207.

Robert Farmer,

Deputy Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–26703 Filed 10–21–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable. For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering and Construction Management, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., Washington, DC 20240; (202) 208–5399; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: October 14, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/22/2010

Suitable/Available Properties

Building

Virginia

Tract 05–151, Qtrs. 11
National Park Service
Spotsylvania VA 22553
Landholding Agency: Interior
Property Number: 61201040001
Status: Excess
Comments: 1642 sq. ft., off-site use only

Land

Texas

FAA Outermarker—Houston
null
Spring TX 77373
Landholding Agency: GSA
Property Number: 54201040001
Status: Surplus
GSA Number: 7–U–TX–1110
Comments: 0.2459 acres, subject to restrictions/regulations regarding the Houston Intercontinental Airport, may not have access to a dedicated roadway

Unsuitable Properties

Building

Arizona

Bldg. 8
Stewart Mountain Dam
Salt River AZ 85215
Landholding Agency: Interior
Property Number: 61201040004
Status: Unutilized
Reasons: Secured Area

California

Bldgs. 40, 41
Lawrence Berkeley Natl Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41201040001
Status: Excess
Reasons: Extensive deterioration

Bldgs. 505, 520, 521
Pinnacles Natl Monument
Paicines CA 95043
Landholding Agency: Interior
Property Number: 61201040002
Status: Excess
Reasons: Extensive deterioration

Bldg. 416
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77201040001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 130
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77201040002
Status: Excess
Reasons: Secured Area

Bldg. 271
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77201040003
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Hawaii

13 Bldgs.
Joint Base Pearl Harbor
Waianae HI 96792
Landholding Agency: Navy
Property Number: 77201040004
Status: Excess
Directions: 285A, 368, 388, 412, 416, 418, 422, 439, 443, 451, 490, 491, 548
Reasons: Extensive deterioration, Secured Area

3 Bldgs.
Joint Base Pearl Harbor
Waianae HI 96792
Landholding Agency: Navy
Property Number: 77201040005
Status: Excess
Directions: 5461, 5462, 5467
Reasons: Secured Area, Extensive deterioration

3 (PAR) Bldgs.
Coast Guard Base Support Unit
Honolulu HI
Landholding Agency: Coast Guard
Property Number: 88201040001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Illinois

5 Bldgs.
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77201040007
Status: Unutilized
Directions: 323, 430, 431, 432, 837
Reasons: Secured Area

New Mexico

Bldg. 15–0562
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201040002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Tennessee

37 Elkmont Bldgs.
Great Smoky Mountains
National Park
Sevier TN 37886
Landholding Agency: Interior
Property Number: 61201040003
Status: Unutilized
Reasons: Extensive deterioration

Land

Hawaii

Land/395 sq. ft.
Marine Corps Base
Bellows HI 96795
Landholding Agency: Navy
Property Number: 77201040006
Status: Underutilized
Reasons: Secured Area

[FR Doc. 2010–26293 Filed 10–21–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5441–N–01]

Additional Waivers Granted to and Alternative Requirements for the State of Illinois' CDBG Disaster Recovery Grant Under Public Law 110–329

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of additional waivers and alternative requirements.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the State of Illinois for the purpose of assisting in the recovery related to the consequences of the State's 2008 disasters. HUD previously published allocation and application notices applicable to this grant on February 13, 2009 (74 FR 7244), and August 14, 2009 (74 FR 41146).

DATES: *Effective Date:* October 27, 2010.

FOR FURTHER INFORMATION CONTACT: Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at telephone number 800–877–8339. Facsimile inquiries may be sent to Mr. Davis at facsimile number 202–401–2044. (Except for the "800" number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, approved September 30, 2008) (hereinafter, "Second 2008 Act" to differentiate it from the earlier 2008 Supplemental Appropriations Act, Public Law 110–252, approved June 30, 2008) appropriated $6.5 billion, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing and economic revitalization in areas affected by hurricanes, flooding, and other natural disasters occurring during 2008 for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

The Second 2008 Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead based paint), upon a request by a state grantee explaining why such waiver is required to facilitate the use of such funds or guarantees and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974 (HCD Act). Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to a request received from the State of Illinois regarding its use of funds under the Second 2008 Act.

The Secretary finds that the following waivers and alternative requirements, as described below, are necessary to facilitate use of the funds for the statutory purposes and are not inconsistent with the overall purpose of Title I of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Second 2008 Act and the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**. Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the Second 2008 Act, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

Waiver Justification

Except as described below, the waivers, alternative requirements, and statutory changes published in notices on February 13, 2009 (74 FR 7244) and August 14, 2009 (74 FR 41146) will continue to apply to the State's CDBG disaster recovery funds appropriated under the Second 2008 Act (Pub. L. 110–329). The actions below provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation. The provisions of this Notice do not apply to funds provided under the annual CDBG program.

National Objective Documentation for Economic Development Activities. For the national objective documentation for business assistance activities, Illinois has asked to apply individual salaries or wages per job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits-by-total household size. Illinois has asserted that this proposed documentation would be simpler and quicker for participating lenders to administer, easier to verify, and would not misrepresent the amount of low- and moderate-income benefit provided. Upon consideration, HUD is granting this waiver, which has also been granted to a number of other state grantees under the Second 2008 Act. It will play a key role in streamlining the State's documentation process because it allows collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

Eligibility—buildings for the general conduct of government. Illinois has requested a limited waiver of the prohibition on funding buildings for the general conduct of government as many of these buildings were damaged by the 2008 disasters. HUD has considered this request and agrees that it is consistent with the overall purposes of the 1974 Act. Therefore, Illinois may use funds provided under the Second 2008 Act to repair or reconstruct buildings used for the general conduct of government so long as (1) the buildings are selected in accordance with a method described in the State's Action Plan for Disaster Recovery, and (2) the State determines that the selected buildings have substantial value in promoting disaster recovery. However, as stipulated by the Second 2008 Act, funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers.

Public benefit for certain economic development activities. Illinois has requested a waiver of the public benefit standards for certain economic development activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low and moderate-income person to which goods or services are provided by the activity. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

After consideration, this Notice waives the public benefit standards for the cited activities, except that the State shall report and maintain documentation on the creation and retention of (a) Total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit. Illinois has made public in its Action Plan the disaster recovery needs each activity is addressing.

Housing incentives to resettle in disaster-affected communities. The State believes that incentives are vital to encourage its citizens to move out of harms' way to safer areas outside the 100 year floodplain. Upon consideration, the Department is waiving 42 U.S.C 5305(a) of the 1974 Act and associated regulations to permit the State to offer disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas.

Limitation on emergency grant payments. HUD is waiving 42 U.S.C. 5305(a) to allow the State to extend interim mortgage assistance to qualified individuals for up to 20 months. The State plans to create an Interim Mortgage Assistance Program to assist homeowners (likely to be applicants in the State's future buyout program) with mortgage payments and other eligible property carrying costs while they may be living in temporary housing. As it takes more than three months for buyout decisions to be made and implemented, this will provide key assistance to qualified homeowners during this interim period.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. Except as described in this Notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, and those described in **Federal Register** notices 74 FR 7244 and 74 FR 41146, shall apply to the use of these funds. Also, please note that any program changes implemented as a result of the waivers published in today's Notice must be in accordance with the State's approved Action Plan for Disaster Recovery.

2. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the State to establish low- and moderate-income jobs benefit by documenting for each person employed the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.

3. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow Illinois to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible and that the State selects in accordance with its approved Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

4. *Public benefit for certain economic development activities.* For economic development activities designed to create or retain jobs or businesses (including but not limited to long-term, short-term, and infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the State shall report and maintain documentation on the creation and retention of total jobs, the number of jobs within certain salary ranges, the average amount of assistance provided per job by activity or program, and the types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

5. *Housing incentives to resettle in disaster-affected communities.* 42 U.S.C 5305(a) of the 1974 Act and associated regulations are waived to permit the State to offer disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. The incentives must be in accordance with State's approved Action Plan and published program design(s), and the State must maintain documentation that the costs are necessary and reasonable.

6. *Limitation on emergency grant payments.* 42 U.S.C. 5305(a) is waived so that Illinois can use funds under the Second 2008 Act to extend interim mortgage assistance to qualified individuals for up to 20 months.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grant under this Notice are as follows: 14.218 and 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: October 4, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–26777 Filed 10–21–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2010–N152; 60138–1265–6CCP–S3]

National Elk Refuge, Jackson, WY; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for the National Elk Refuge in Jackson, Wyoming. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by November 22, 2010. Submit comments by one of the methods under **ADDRESSES**. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: nationalelkrefuge@fws.gov. Include "National Elk Refuge CCP" in the subject line of the message.

Fax: Attn: Toni Griffin, Planning Team Leader, 303–236–4792.

U.S. Mail: Toni Griffin, Planning Team Leader, Division of Refuge Planning, 134 Union Blvd., Suite 300, Lakewood, CO 80228.

In-Person Drop-off: You may drop off comments during regular business hours at the above address, or at the National Elk Refuge office located at 675 E. Broadway, Jackson, WY 83001.

FOR FURTHER INFORMATION CONTACT: Toni Griffin, 303–236–4378 (phone); or David C. Lucas, Chief, Division of Planning, P.O. Box 25486, Denver Federal Center, Denver, CO 80228.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for the National Elk Refuge in Jackson, WY. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) to obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 as amended (16 U.S.C. 668dd–668ee) (Administration Act) 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, where appropriate, opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the National Elk Refuge.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

National Elk Refuge

The National Elk Refuge was established in 1912 as a "winter game (elk) reserve" (37 Stat. 293, 16 USC 673), and the following year Congress designated the area as "a winter elk refuge" (37 Stat. 847). In 1921 all lands included in the refuge, or that might be added in the future, were reserved and set apart as "refuges and breeding grounds for birds" [Executive Order (EO) 3596], which was affirmed in 1922 (EO 3741). In 1927 the refuge was expanded to provide "for the grazing of, and as a refuge for, American elk and other big game animals" (44 Stat. 1246, 16 USC 673a). These purposes apply to all or most of the lands now within the refuge. Several parcels have been added to the refuge specifically for the conservation of fish and wildlife (Fish and Wildlife Act of 1956), the development of wildlife-oriented recreational opportunities (Refuge Recreation Act of 1962, 16 U.S.C. 460k–l), the protection of natural resources, and the conservation of threatened and endangered species (Endangered Species Act of 1973).

The refuge is located in Teton County, Wyoming. A wide variety of habitats are found on the National Elk Refuge, including grassy meadows, marshes, timbered areas, sagebrush, and rocky outcroppings. Between November and May, the wildlife concentrations and diversity provide spectacular wildlife viewing opportunities.

The refuge's nearly 25,000 acres provide a winter home for one of the largest wintering concentrations of elk. In addition to the large elk herds, a free-roaming bison herd winters at the refuge.

A variety of waterfowl, including trumpeter swans, can be seen on nearly

1,600 acres of open water and marshlands. At least 47 mammal species and nearly 175 species of birds have been observed on the refuge. Some notable species include moose, bighorn sheep, pronghorn, gray wolves, mountain lions, bald eagles, and peregrine falcons.

Scoping: Preliminary Issues, Concerns, and Opportunities

The CCP will not address bison and elk management on the refuge. This is because a Bison and Elk Management Plan completed in 2007 provides goals, objectives, and strategies for managing bison and elk on the National Elk Refuge and in Grand Teton National Park for the next 15 years. The CCP will address all other aspects of refuge management, including migratory birds, threatened and endangered species, visitor use, and cultural resources. We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. During public scoping, we may identify additional issues.

We request input as to which issues affecting refuge management or public use should be addressed during the planning process. We are especially interested in receiving public input in the following areas:

(a) What suggestions do you have for managing migratory birds on the refuge?

(b) What concerns do you have regarding visitor services and public use on the refuge?

(c) What changes, if any, would you like to see in the management of this refuge?

We provide the above questions for your optional use. We have no requirement that you provide information; however, any comments the planning team receives will be used as part of the planning process.

Public Meetings

We will give the public an opportunity to provide input at a public meeting. You can obtain the schedule from the planning team leader or project leader (*see* **ADDRESSES**). We will announce opportunities for public input in local news media throughout the CCP process. You may also send comments anytime during the planning process by mail, e-mail, or fax (*see* **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Any comments we receive will become part of the administrative record and may be available to the public. Before submitting comments that include your address, phone number, e-mail address, or other personal identifying information, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 6, 2010.

Noreen E. Walsh,

Deputy Regional Director.

[FR Doc. 2010–26699 Filed 10–21–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2010–N081; 80230–1265–0000–S3]

Klamath Marsh National Wildlife Refuge, Klamath County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Klamath Marsh National Wildlife Refuge (NWR). The CCP describes how we will manage the Refuge for the next 15 years.

DATES: The CCP and FONSI are available now. The FONSI was signed on June 14, 2010. Implementation of the CCP may begin immediately.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web Site: Download a copy of the document(s) at *http://www.fws.gov/klamathbasinrefuges/KlamathMarshCCP/kmarshccp.html.*

Email: fw8plancomments@fws.gov. Include "Klamath Marsh CCP" in the subject line.

Mail: U.S. Fish and Wildlife Service, Attn: Mark Pelz, Chief, Refuge Planning, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846.

In-Person Viewing or Pickup: Call 541–783–3380 to make an appointment during regular business hours at Klamath Marsh National Wildlife Refuge, HC 63 Box 303, Chiloquin, OR 97624.

Local Library or Libraries: The document(s) are also available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mark Pelz, Chief, Refuge Planning, 2800 Cottage Way, W–1832, Sacramento, CA, 95825, phone (916) 414–6500.

SUPPLEMENTARY INFORMATION:

Background

Klamath Marsh was established in 1958 and is located in south central Oregon on the east slope of the Cascade Mountain Range along the Williamson River. The Service owns approximately 40,960 acres within the 49,583-acre acquisition boundary. The Refuge protects one of the largest remaining natural freshwater marshes on the west coast. Other important habitats on the refuge include sedge meadow, grassland, riverine, riparian scrub, and ponderosa pine forest. The Refuge protects habitat for a variety of unique species including greater sandhill cranes, yellow rails, Oregon spotted frogs, red-naped sapsuckers, pygmy nuthatches, bald eagles, beaver, and red band trout. The entire Refuge is located within the former reservation of the Klamath Tribes.

We announce our decision and the availability of the FONSI for the final CCP in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the EA that accompanied the draft CCP.

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Our Draft CCP and Environmental Assessment (EA) were available for a 45-

day public review and comment period, which we announced via several methods, including press releases, updates to constituents, and a **Federal Register** notice (74 FR 38668, August 4, 2009). The Draft CCP/EA identified and evaluated three alternatives for managing the Refuge for the next 15 years. Alternative A was the no-action alternative, which described current Refuge management activities. Alternative B (the selected alternative) would restore the portion of the Williamson River and Big Spring Creek on the Refuge; and expand visitor services. Alternative C would also restore the portions of the Williamson River and Big Springs Creek on the Refuge; and recommend 11,165 acres for wilderness designation.

We received 56 comment letters on the Draft CCP and EA during the review period. We incorporated these received comments into the CCP when possible, and we responded to the comments in an appendix to the CCP. In the FONSI, we selected Alternative B, the basis for the CCP, for implementation. The FONSI documents our decision and is based on the information and analysis contained in the EA.

Under the selected alternative, the Service would restore the portion of the Williamson River and Big Spring Creek on the Refuge; substantially improve management of emergent marsh, meadows, ponderosa pine forest and aspen to increase habitat value for migratory birds and other wildlife; improve and expand visitor services by developing new trails, interpretive exhibits, an environmental education program, and a visitor contact station; maintain existing hunting and fishing programs with minor modifications; increase cultural resources protection; and recommend no units for wilderness designation. The Service would also revise and update the MOU with the Klamath Tribes regarding subsistence hunting and gathering. The selected alternative best meets the Refuge's purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Public Availability of Documents

In addition to the methods in ADDRESSES, you can view or obtain documents at the following locations:

- Our Web site: *http://www.fws.gov/klamathbasinrefuges/KlamathMarshCCP/kmarshccp.html*
- Public Libraries: During regular library hours, at the following libraries:

Library	Address
Chiloquin	216 South 1st Street, Chiloquin, OR 97624.
Klamath County	126 South Third Street, Klamath Falls, OR 97601.
USFWS–NCTC	698 Conservation Way, Shepherdstown, WV 25443.

Dated: June 14, 2010.

Ren Lohoefener,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–26666 Filed 10–21–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Proposed Fee-to-Trust Conveyance of Property for the Cayuga Nation of New York in Cayuga and Seneca Counties, NY

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) is making available for public review the Final Environmental Impact Statement (FEIS) for the proposed conveyance of 125± acres of land that is currently held by the Cayuga Nation of New York in fee status into trust status. The uses of the properties, which include two convenience stores, would not change. The application includes two properties that have been used for Class II Indian gaming, operational at the time of the application, on one property in Seneca County and one property in Cayuga County. The Class II Indian gaming on the Cayuga Reservation would be expected to resume if the properties are placed into trust. The cooperating agencies for the proposal are the Cayuga Nation, Seneca County, Cayuga County and New York State Department of Environmental Conservation. The purpose of the proposed action is to create a tribal land base and to help meet the Nation's socio-economic needs.

DATES: The Record of Decision (ROD) on the proposed action will be issued no sooner than 30 days after the release of the FEIS. Thus, any comments on the FEIS must arrive by November 22, 2010.

ADDRESSES: You may mail, hand carry or telefax written comments to Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, Telefax (615) 564–6701. Please see the SUPPLEMENTARY INFORMATION section of this notice for directions for submitting comments and locations where copies of the FEIS are available.

FOR FURTHER INFORMATION CONTACT: Kurt G. Chandler, (615) 564–6832.

SUPPLEMENTARY INFORMATION: The proposed alternatives are: (A) The Proposed Action (this is the action proposed by the Cayuga Indian Nation, to take all 125 +/− acres into trust); (B) No Action Alternative; and (C) Enterprise Properties into Trust (this alternative includes a single section of contiguous parcels in Seneca County and a single section of contiguous parcels in Cayuga County). Alternative C was proposed in order to analyze whether there were any specific impacts related to the contiguity of the parcels.

The Draft Environmental Impact Statement (DEIS), dated May 2009, has been revised in response to comments, and the revision is being issued as the FEIS for the purposes of compliance with the National Environmental Policy Act of 1969. The total acreage and number of parcels was reduced after the publication of the DEIS. The application originally consisted of seven parcels in four contiguous groups, listed under nine tax identification numbers. With the removal of a single 0.05 acre parcel from the application, three contiguous groups, listed under eight tax identification numbers, are currently under consideration for transfer into trust status. This revision is not considered significant, nor does the removal of the parcel from the application provide significant differences in impacts on the environment. Therefore, issuance of an additional DEIS for public review was not considered necessary.

Directions for Submitting Comments: Please include your name, return address and the caption, "FEIS Comments, Cayuga Indian Nation of New York Trust Acquisition Project," on the first page of your written comments.

Public Availability of the FEIS: Copies of the FEIS will be available for viewing at the following locations during normal business hours:

- Lakeside Trading, 2552 Route 89, Seneca Falls, NY 13148
- Lakeside Trading, 299 Cayuga Street, Union Springs, NY 13160
- Seneca Falls Library, 47 Cayuga St., Seneca Falls, NY 13148

• Springport Free Library, 171 Cayuga St., P.O. Box 501, Union Springs, NY 13160

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the mailing address for the BIA Eastern Regional Office shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m. (unless otherwise shown), Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: October 5, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–26222 Filed 10–21–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Drakes Bay Oyster Company Special Use Permit/Environmental Impact Statement, Point Reyes National Seashore, CA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Drakes Bay Oyster Company Special Use Permit, Point Reyes National Seashore (hereafter Park).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement (EIS) for the Drakes Bay Oyster Company Special Use Permit, Point Reyes National Seashore, California. Pursuant to section 124 of Public Law 111–88, the Secretary of the Interior has the discretionary authority to issue a special use permit for a period of 10 years to Drakes Bay Oyster Company (DBOC) for its shellfish operation at Point Reyes National Seashore. The existing Reservation of Use and Occupancy and associated special use permit held by DBOC will expire on November 30, 2012. DBOC has submitted a request for the issuance of a new permit upon expiration of the existing permit.

On behalf of the Secretary, the National Park Service will use the National Environmental Policy Act (NEPA) process to engage the public and evaluate the effects of continuing the commercial operation within the national seashore. The results of the NEPA process will be used to inform the decision of whether a new special use permit should be issued to DBOC for a period of 10 years.

A scoping letter has been prepared that details the purpose, need, and objectives of the EIS and provides an overview of the NEPA process. Copies of that information may be obtained online at (*see* Web site below) or from the office of the Superintendent, Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956 (415) 464–5162.

DATES: The NPS will accept comments from the public through November 22, 2010. The NPS intends to hold public scoping meetings in several Bay Area locations during the scoping period. Details regarding the exact times and locations of these meetings will be announced on the Park's Web site, at *http://parkplanning.nps.gov/pore* (click on the Drakes Bay Oyster Company Special Use Permit EIS link), and through local and regional media at least 15 days in advance of the meetings.

ADDRESSES: Information will be available for public review online (Web site noted above) and in the office of the Superintendent, Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956 (415) 464–5162.

FOR FURTHER INFORMATION CONTACT: Melanie Gunn, Outreach Coordinator, Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956 (415) 464–5131.

SUPPLEMENTARY INFORMATION: If you wish to comment on the purpose, need, objectives, or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail or hand deliver comments on the Drakes Bay Oyster Company Special Use Permit EIS to the Superintendent, Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956. You may also comment via the Internet (Web site noted above). Written comments will also be accepted at the public meetings. Comments will not be accepted by fax, e-mail, or in any way other than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. 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.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010–26733 Filed 10–21–10; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Klamath Tribes Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Secretary's certification of the amendment to the Klamath Tribes Liquor Control Ordinance. The first Ordinance was published in the **Federal Register** on November 11, 1953 (18 FR 7178 (1953)). This amendment further regulates and controls the sale, possession and distribution of liquor within the tribal lands. The tribal lands are located in Indian country and this amended Ordinance allows for possession of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control liquor possession, sale and use in the community.

DATES: *Effective Date:* This Ordinance is effective on November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Betty Scissons, Tribal Government Services Officer, Northwest Regional Office, 911 NE 11th Ave., 8th Floor, Portland, OR 97232, Telephone: (503) 231–6723, Fax (503) 231–2189; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop

4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Klamath Tribes enacted this Liquor Control Ordinance by General Council Resolution # 2010–004 on May 22, 2010. The purpose of this amended ordinance is to govern the possession, sale and distribution of alcohol within tribal lands of the Klamath Tribes.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this Liquor Control Ordinance of the Klamath Tribes was duly adopted by the General Council, on May 22, 2010.

Donald Laverdure,

Deputy Assistant Secretary for Indian Affairs.

The Klamath Tribes Liquor Control Ordinance reads as follows:

Liquor Control Ordinance of the Klamath Tribes

General

Title. This ordinance shall be known as "The Klamath Tribes Liquor Control Ordinance."

Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. 1161 by the authority of the General Council under the Constitution of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians, Article VI, Section G.

General Purpose. The purpose of this ordinance is to regulate the sale, distribution and possession of liquor on the Klamath Indian Reservation and other lands subject to tribal governance.

Article I. Definitions

1.1. As used in the title, these words shall have the following meanings unless the context clearly requires otherwise:

1.1.1. "*Alcohol*" means that substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced.

1.1.2. "*Bar*" means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises.

1.1.3. "*Beer*" means any alcoholic beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water.

1.1.4. "*Liquor*" includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain alcohol.

1.1.5. "*Liquor Store*" means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to sale of liquor.

1.1.6. "*Malt Liquor*" means beer, strong beer, ale, stout and porter.

1.1.7. "*Package*" means any container or receptacle used for holding liquor.

1.1.8. "*Person*" means any natural person, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

1.1.9. "*Public Place*" includes state, county, tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

1.1.10. "*Reservation*" means all territory within the exterior boundaries of the area recognized as The Klamath Indian Reservation and all other territory (i) which is or in the future may be located outside of said boundaries, and (ii) to which it is possible to extend the Tribes' jurisdiction or authority, including, without limitation, territory within the exterior boundaries of Indian country of the Tribes or of its members and all property held by the United States in trust for the Tribes or for a member of the Tribes.

1.1.11. "*Sale*" and "*Sell*" include exchange, barter and traffic, and also include the selling or supplying or distributing of liquor, by any means whatsoever, by any person to any person.

1.1.12. "*Spirits*" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

1.1.13. "*Tribes*" means the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians.

1.1.14. "*Tribal Council*" means the governing body of the Tribes with respect to governmental functions.

1.1.15. "*Tribal Court*" means Tribal Court for the Tribes.

1.1.16. "*Wine*" means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added during or after fermentation, and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding 17 percent of alcohol by weight.

1.1.17. "*General Council*" means all eligible voters of the Klamath, Modoc and Yahooskin Band of Snake Indians.

Article II. Rules, Regulations and Enforcement

2.1. It shall be a violation of this ordinance for any person:

2.1.1. To in any manner introduce, sell, offer for sale, distribute, transport, consume, use or possess liquor on the Reservation except as expressly permitted by this ordinance,

2.1.2. To buy liquor on the Reservation from any person other than a tribally-licensed person,

2.1.3. Engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, to permit any person to drink liquor in any public conveyance or for any person to consume liquor in a public conveyance,

2.1.4. To possess liquor with the intent to sell except as expressly permitted by this ordinance,

2.1.5. Under the age of 21 years to consume, acquire or have in possession any liquor,

2.1.6. Owning or controlling a premises to permit any other person under the age of 21 to consume liquor on such premises except as expressly exempted by this ordinance,

2.1.7. To sell or provide any liquor to any person under the age of 21 years,

2.1.8. To transfer in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor; provided, that there is corroborative testimony of a witness other than the underage person,

2.1.9. To knowingly sell liquor to a person under the influence of liquor,

2.1.10. To attempt to purchase liquor through the use of false or altered identification which falsely purports to show the individual as being over the age of 21 years, or

2.1.11. To possess, introduce or consume liquor at a place or premises that is or would be considered a public, common or other nuisance under any tribal, state or federal statutory or common law.

2.2. Any person who promotes any activity or owns or controls land on which there is any activity that is a violation of this ordinance shall be liable for and subject to the same penalties and proceedings as the person who directly commits the violation.

2.3. Any person guilty of a violation of this ordinance shall be liable to pay the Tribes up to $5,000 per violation as civil penalties.

2.4. When requested by the provider of liquor, a person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

2.4.1. Driver's license or identification card issued by any state department of motor vehicles;

2.4.2. United States Active Duty Military card; or

2.4.3. Passport; or

2.4.4. Official Tribal Identification from Federally recognized Tribes.

2.5. Liquor which is possessed contrary to the terms of this ordinance is declared to be contraband. Any tribal agent, employee or officer who is authorized by the General Council to enforce this ordinance shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property. Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribes.

Article III. Abatement

3.1. Any room, house, building, vehicle, structure, land or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, consumed or possessed or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

3.2. The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the General Council may institute and maintain an action in the Tribal Court in the name of the Tribes to abate and perpetually enjoin any nuisance declared under this article. In addition to other remedies at tribal law, depending upon the severity of past offenses, the risk of offenses in the future, the effect of the violator's activity on public health, safety or welfare and any other appropriate criteria, the Tribal Court may order the room, house, building, vehicle, structure, land or place closed or it may require the owner, lessee, tenant, or occupant thereof to give bond payable to the Tribes, of sufficient sum and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, possessed, consumed or otherwise disposed of in violation of the provisions of this ordinance or of any other applicable tribal law and that such person will pay all penalties, fees, costs and damages assessed against him for any violation of this ordinance or other tribal laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Tribes. No order or injunction closing any business for a violation of this ordinance shall be issued without granting the opportunity to have a full evidentiary and adversary hearing.

3.3. In all cases where any person has been found in violation of this ordinance, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance, and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, land or place against which such action is brought is a public nuisance.

Article IV. Powers of Enforcement

4.1. Powers and Duties. In furtherance of this ordinance, the General Council shall have the following powers and duties:

4.1.1. To publish and enforce rules and regulations governing liquor on the Reservation;

4.1.2. To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the General Council to perform its functions;

4.1.3. To issue licenses permitting the sale, manufacture or distribution of liquor on the Reservation;

4.1.4. To bring proceedings in the Tribal Court or other appropriate forum to enforce this ordinance as necessary;

4.1.5. To seek penalties, taxes, damages, fees and other appropriate remedies, orders and injunctions for the violation of this ordinance;

4.1.6. To makes such reports as may be required; and

4.1.7. To collect taxes and fees levied or set by the General Council and to keep accurate records, books and accounts.

4.2. Limitations on Powers. In the exercise of its powers and duties under this ordinance, the General Council and its individual members shall not:

4.2.1. Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

4.2.2. Waive the immunity of the Tribes from suit without the express written consent and resolution of the Tribal Council.

4.3. Inspection Rights. All premises on which liquor is sold, consumed, possessed or distributed shall be open for inspection by the Tribes at all reasonable times for the purposes of ascertaining whether the rules and regulations of the General Council and this ordinance are being complied with.

4.4. Hearings and Appeals. Violations of this ordinance shall be deemed a civil offense against the Tribes. Civil actions by the Tribes against violators may proceed in hearings initiated and held by any hearing officer designated by General Council. The General Council may impose penalties, damages, costs, taxes and attorneys fees and take any other actions reasonably necessary to carry out this ordinance. Liabilities imposed under this ordinance shall be a lien upon the violator's property located on the reservation until paid and may be enforced and executed upon through the Tribal Court. Orders issued hereunder may be appealed to Tribal Court and considered under the arbitrary and capricious standard of review.

Article V. Sales of Liquor

5.1. License Required. Sales of liquor on the Reservation may only be made at businesses which hold a license issued pursuant to this ordinance.

5.2. Sales for Cash. All liquor sales on the Reservation shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that the provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, etc.

5.3. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any liquor on the Reservation is prohibited. Any person who is not licensed pursuant to this ordinance who purchases liquor on the Reservation and sells it, whether in the original container or not, shall violate this ordinance.

Article VI. Licensing

6.1. Procedure. All persons or entities which desire to sell liquor on the Reservation must apply to the Tribes for a license.

6.2. Application. Any person or entity applying for a license to sell or serve liquor on the Reservation must fill in the application provided for this purpose by the Tribes and pay such application fee as may be set from time to time by the General Council for this purpose. Said application must be filled out completely in order to be considered.

6.3. Issuance of License. The General Council may issue a license if it believes that such issuance is in the best interests of the Tribes.

6.4. Period of License. Each license may be issued for a period not to exceed two years from the date of issuance.

6.5. Renewal of License. A licensee may renew its license if the licensee has complied in full with this ordinance provided however, that the General Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Tribes.

6.6. Revocation of License. The General Council may suspend or revoke a license due to one or more violations of this ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

6.7. Non-transferability of Licenses. Licenses issued by the General Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VII. Taxes

7.1. Sales Tax. The General Council shall have the authority, as may subsequently be specified under tribal law, to levy and to collect a tax on each retail sale of liquor on the Reservation based upon a percent of the retail sales price. All taxes from the sale of liquor on the Reservation shall be paid over to the General Treasury of the Tribes.

7.2. Taxes Due. All taxes for the sale of liquor on the Reservation are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due or on such other dates as specified by tribal regulation.

7.3. Delinquent Taxes. Past due taxes shall accrue interest at 2 percent per month.

7.4. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

7.5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of liquor on the Reservation. Said review or audit may be done periodically by the Tribes or through its agents or employees whenever, in the opinion of the General Council, such a review or audit is necessary to verify the accuracy of reports.

Article VIII. Revenue

Revenue collected under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the General Council for governmental social services, including education, prevention and treatment programs to fight alcohol abuse on the Reservation.

Article IX. Exceptions

9.1. The introduction, distribution, transport, consumption, sale, offer for sale, use, consumption and possession of liquor is permitted:

9.1.1. For consumption at a gaming facility complex or other tribally-owned enterprise,

9.1.2. For scientific research or manufacturing products other than liquor,

9.1.3. For medical use under the direction of a physician, medical or dental clinic, or hospital,

9.1.4. For preparations not fit for human consumption such as cleaning compounds and toilet products, and for flavoring extracts, or

9.1.5. For sacramental use.

9.2. The consumption and possession of liquor for personal consumption by a person legally present on private, non-commercial property is permitted, subject to applicable tribal law.

9.3. These exceptions shall be narrowly construed.

Article X. Severability and Effective Date

10.1. If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

10.2. This ordinance is effective 30 days after the date of publication in the **Federal Register.**

Article XI. Amendment and Construction

11.1. This ordinance may only be amended by a vote of the General Council or as otherwise allowed by Tribal law.

11.2. Nothing in this ordinance shall be construed to diminish or impair in any way the rights, sovereign powers or sovereign immunity of the Tribes.

11.3. This Ordinance conforms to all requisite laws pursuant to 18 U.S.C. 1161. The Tribes will comply with Oregon Liquor Laws to the extent required by 18 U.S.C. 1161.

Certification

We, the undersigned, as Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Regular General Council meeting held on the 22nd day of May, 2010 where a quorum was present, the General Council duly adopted this Resolution by a vote of __ 43 ____ for, ____ 4 ____ opposed, and __ 8 ____ abstaining.

Gary Frost,

Chairman, The Klamath Tribes.

Torina Case,

Secretary, The Klamath Tribes.

[FR Doc. 2010–26695 Filed 10–21–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, November 5, 2010, at Rockwood Manor Park, 11001 MacArthur Boulevard, Potomac, Maryland 20854.

DATES: Friday, November 5, 2010.

ADDRESSES: Rockwood Manor Park, 11001 MacArthur Boulevard, Potomac, Maryland 20854.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park. This is an open meeting and the Commission welcomes public comment. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. James G. McCleaf II
Mr. John A. Ziegler
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath
Ms. Patricia Schooley
Mr. Jack Reeder
Ms. Merrily Pierce

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park.

Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: August 30, 2010.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal, National Historical Park.

[FR Doc. 2010–26738 Filed 10–21–10; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

National Park Service

Denali National Park and Preserve Aircraft Overflights Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Aircraft Overflights Advisory Council. Each meeting will be recorded and meeting minutes will be available upon request from the Park Superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone 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.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Friday, December 3, 2010, from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: Campbell Creek Science Center, 5600 Science Center Drive, Anchorage, Alaska 99507. Telephone (907) 267–1247.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov.* Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, PO Box 588, Talkeetna, AK 99676. For accessibility requirements, please call Miriam Valentine at (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to order
2. Roll Call and Confirmation of Quorum
3. Chair's Welcome and Introductions
4. Review and Approve Agenda
5. Member Reports
6. Agency and Public Comments
7. Superintendent and NPS Staff Reports
8. Agency and Public Comments
9. Other New Business
10. Agency and Public Comments
11. Set time and place of next Advisory Council meeting
12. Adjournment

Victor W. Knox,

Deputy Regional Director, Alaska.

[FR Doc. 2010–26732 Filed 10–21–10; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Public Meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Gates of the Arctic National Park SRC will meet to develop and continue work on NPS subsistence hunting program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone 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.

Gates of the Arctic National Park SRC Meeting Date and Location: The Gates of the Arctic National Park SRC meeting will be held on Tuesday, November 9, 2010, and Wednesday, November 10, 2010, from 9 a.m. to 5 p.m. at Sophie Station Hotel, 1717 University Avenue, Fairbanks, AK 99709, (907) 479–3650. The meeting may end early if all business is completed.

For Further Information On the Gates of the Arctic National Park SRC Meeting Contact: Dave Krupa, Subsistence Manager, (907) 455–0631, Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, AK 99703, or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603.

Proposed SRC Meeting Agenda:

The proposed meeting agenda includes the following:

1. Call to order
2. SRC Roll Call and Confirmation of Quorum
3. SRC Chair and Superintendent's Welcome and Introductions
4. Approval of Minutes from Last SRC Meeting
5. Administrative Announcements
6. Review and Approve Agenda
7. SRC Member Reports
8. Public and Other Agency Reports
9. Park Subsistence Manager's Report
10. Park Staff Reports
    a. Resource Management Update
    b. Ranger Division Update
    c. Subsistence Uses of Horns, Antlers, Bones and Plants Environmental Assessment (EA) Update
11. Federal Subsistence Board Update
12. Alaska Board of Game Update
13. Old Business
14. New Business
15. Public and other Agency Comments
16. SRC Work/Training Session
17. Set Time and Place for next SRC Meeting
18. Adjournment

SRC meeting location and dates may need to be changed based on lack of quorum, inclement weather or local circumstances. If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date.

Victor W. Knox,

Deputy Regional Director, Alaska.

[FR Doc. 2010–25830 Filed 10–21–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Minidoka National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460l–9(c)(1), the boundary of Minidoka National Historic Site is modified to include an additional nine acres of land identified as Tract 01–106, tax parcel number RP08S19E329980A. The land is located in Jerome County, Idaho, immediately adjacent to the current western boundary of Minidoka National Historic Site. The boundary revision is depicted on Map No. 914/80,006 dated June 2010. The map is available for inspection at the following locations: National Park Service, Columbia Cascades Land Resources Program Center, 168 South Jackson Street, Seattle, WA 98104 and National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Columbia Cascades Land Resources Program Center, 168 South Jackson Street, Seattle, Washington 98104, (206) 220–4100.

DATES: The effective date of this boundary revision is October 22, 2010.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460l–9(c)(1) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register.** The Committees have been notified of this boundary revision. Inclusion of these lands within the park boundary will enable the landowner to sell the subject land to the National Park Service. The inclusion and acquisition of this property will enable the Service to relocate the original barracks onto the property and thereby more accurately interpret the events that took place during the Japanese-American internment from 1942 to 1945. Additionally, the boundary revision will provide protection of historic physical features and remnants of buildings located on the property.

Dated: October 5, 2010.

Cynthia L. Ip,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010–26730 Filed 10–21–10; 8:45 am]

BILLING CODE 4312–DC–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Electronic Device Mixer Apparatus for use in the Audio Disc-Jockey Industry,* DN 2761; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Numark Industries, L.P. on October 18, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic device mixer apparatus for use in the audio disc-jockey industry. The complaint names as respondent Dj-Tech Limited of Kowicon, Hong Kong.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2761") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: October 18, 2010.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–26658 Filed 10–21–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–725]

In the Matter of Certain Caskets; Notice of Commission Determination Not To Review an Initial Determination Finding Respondent Ataudes Aguilares in Default; Request for Submissions on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission hereby provides notice that it has determined not to review an initial determination ("ID") (Order No. 5) issued by the presiding administrative law judge ("ALJ") finding respondent Ataudes Aguilares, S. de R.I. de C.V. ("Ataudes Aguilares") in default.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 8, 2010, based on a complaint filed by Batesville Services, Inc. ("Batesville") of Batesville, Indiana. 75 FR 16837–38. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain caskets by reason of infringement of certain claims of U.S. Patent Nos. 5,611,124; 5,727,291; 6,836,936; 6,976,294; and 7,340,810. The Commission's notice of investigation named Ataudes Aguilares as the respondent.

On September 24, 2010, the presiding administrative law judge ("ALJ") (Judge Essex) issued the subject ID, granting a motion by Batesville and finding Ataudes Aguilares in default for, *inter alia,* failing to respond to the ALJ's order to show cause why Ataudes Aguilares should not be found in default. No petitions for review were filed.

The Commission has determined not to review the subject ID finding Ataudes Aguilares in default pursuant to Rule 210.16(a)(1) and presumes the facts alleged in the complaint to be true with respect to Ataudes Aguilares.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease-and-desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on November 5, 2010. Reply submissions, if any, must be filed no later than the close of business on November 12, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: October 18, 2010.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–26692 Filed 10–21–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–030]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 26, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1174 and 1175 (Final)(Seamless Refined Copper Pipe and Tube from China and Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before November 8, 2010.)
5. Outstanding action jackets:

(1) Document No. GC–10–161 concerning Inv. No. 337–TA–413 (Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing Same).

(2) Document No. GC–10–184 concerning approval of annual **Federal Register** notice on investigations of APO and rules violations completed in calendar year 2009.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 19, 2010.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–26816 Filed 10–20–10; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–719]

In the Matter of Certain Lighting Products; Notice of Commission Decision Not To Review an Initial Determination Terminating a Respondent on the Basis of a Settlement Agreement and a Consent Order; Issuance of Consent Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (Order No. 7) granting a joint motion to terminate the sole respondent in the above-captioned investigation on the basis of a settlement agreement and a proposed consent order. The Commission has issued the subject consent order. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 2, 2010, based on a complaint filed by Blumberg Industries, Inc., d/b/a Fine Arts Lamps (Miami Lakes, Florida) ("Blumberg"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain lighting products by reason of infringement of U.S. Patent No. D570,038; U.S. Copyright Registration Nos. VA 1–399–618 and VA 1–415–353; and U.S. Trademark Registration Nos. 3,703,710, 3,703,711, 3,700,479, and 3,700,480. 75 FR 30855 (June 2, 2010). The complaint, as supplemented, named one respondent: Lights & More, Inc. (San Juan, Puerto Rico) ("L&M").

On September 17, 2010, Blumberg and L&M moved to terminate the investigation against L&M based on a proposed consent order and consent order stipulation. On September 20, 2010, the Commission investigative attorney responded in support of the motion. On September 23, 2010, the ALJ granted the motion as an Initial Determination ("ID") and terminated the investigation. Order No. 7.

No petitions for review of the ID were filed. The Commission has determined not to review the ID and has issued the subject consent order. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

Issued: October 18, 2010.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–26647 Filed 10–21–10; 8:45 am]

BILLING CODE P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Committees on Bankruptcy, Criminal Rules

AGENCY: Advisory Committee on Bankruptcy Rules and Advisory Committee on Criminal Rules, Judicial Conference of the United States.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committee on Bankruptcy Rules and the Advisory Committee on Criminal Rules have proposed amendments to the following rules and forms:

Bankruptcy Rules: 3001, 7054, and 7056, and Official Forms 10, 25A, and new Forms 10 (Attachment A), 10 (Supplement 1), and 10 (Supplement 2).

Criminal Rules 5, 58, and new Rule 37.

The text of the proposed rules amendments and new rules and accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules.*

Notice of Proposed Amendments and Open Hearings

The Judicial Conference Committee on Rules of Practice and Procedure submits these proposed rules amendments and new rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than February 16, 2011. All written comments on the proposed rule amendments can be sent by one of the following three ways: by electronic mail at *http://www.uscourts.gov/rules;* by overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; or by facsimile to Peter G. McCabe at (202) 502–1766. In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

Public hearings are scheduled to be held on the amendments to:

- Bankruptcy Rules in San Francisco, CA, on January 7, 2011, and in Washington, DC, on February 4, 2011;
- Criminal Rules in San Francisco, CA, on January 5, 2011, and in Atlanta, GA, on January 25, 2011.

Notice of Proposed Amendments and Open Hearings

Those wishing to testify should contact the Committee Secretary at the above address in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United State Courts, Washington, DC 20544, Telephone (202) 502–1820.

Dated: October 7, 2010.

John K. Rabiej,

Chief Rules Committee Support Office.

[FR Doc. 2010–26437 Filed 10–21–10; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0028]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Inventories, Licensed Explosives Importers, Manufacturers, Dealers, and Permittees.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 21, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, Chief, Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Inventories, Licensed Explosives Importers, Manufacturers, Dealers, and Permittees.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF REC 5400/1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The records show the explosive material inventories of those persons engaged in various activities within the explosives industry and are used by the government as initial figures from which an audit trail can be developed during the course of a compliance inspection or criminal investigation. Licensees and permittees shall keep records on the business premises for five years from the date a transaction occurs or until discontinuance of business or operations by licensees or permittees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 13,106 respondents will take 2 hours to complete the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 26,212 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, 2 Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: October 19, 2010.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–26785 Filed 10–21–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0041]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Implementation of Public Law 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 21, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chad Yoder, Firearms & Explosives Industry Division, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Implementation of Public Law 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

(2) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The Act restricts the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. The regulations provide that Federal firearms licensees may transfer these weapons to law enforcement agencies and law enforcement officers with proper documentation. This documentation is necessary for ATF to ensure compliance with the law and to prevent the introduction of semiautomatic assault weapons into commercial channels.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 61,529 respondents will provide the necessary documentation and maintain records for a total of 2 hours and 50 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 148,900 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, Room 2E–502, 145 N Street, NW., Washington, DC 20530.

Dated: October 19, 2010.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–26793 Filed 10–21–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on August 31, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), TeleManagement Forum ("The Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Technology Group, Kansas City, MO; Aito Technologies, Espoo, FINLAND; Alepo USA, Austin, TX; Aria Networks *http://www.aria-networks.com,* Chippenham, Wiltshire, UNITED KINGDOM; Aspirvia Ltd, Bournemouth, UNITED KINGDOM; Avea, Istanbul, TURKEY; Avvasi Incorporated, Waterloo, Ontario, CANADA; Axiros GmbH, Munich Hoehenkirchen, GERMANY; Azerfon, Baku, AZERBAIJAN; BATMANN Consulting, Centennial, CO; Beijing University of Posts and Telecommunications, Beijing, PEOPLE'S REPUBLIC OF CHINA; Billskill AB, Stockholm, SWEDEN; Bintegra, Hoce, SLOVENIA; Bull Telecom & Media, Les-Clayes-Sous-Bois, FRANCE; Calix, Inc., Petaluma, CA; Cloud.com, Cupertino, CA; Compunet Services, Inc., Stockbridge, GA; Cordys, Putten, THE NETHERLANDS; Cosmo Bulgaria Mobile EAD (Globul), Sofia, BULGARIA; CTBC Multimidia Data Net S/A, Uberlândia, Minas Gerais, BRAZIL; DANTE, Cambridge, UNITED KINGDOM; Dataupia, Cambridge, MA; Defence Science and Technology Laboratory, Salisbury, Wiltshire, UNITED KINGDOM; Detecon International, Bonn, GERMANY; Devoteam Consulting A/S, Danish Telecoms Business Unit, Copenhagen, DENMARK; Eastek Pty Ltd, Melbourne, Victoria, AUSTRALIA; EMBRATEL, Rio de Janeiro, BRAZIL; Engineering IT, Pont St. Martin (AO), ITALY; Eutelsat S.A., Paris, FRANCE; EWE TEL GmbH, Oldenburg, GERMANY; Fenavic Ltd, Yehud, ISRAEL; GICM Associates, Inc, Almaty, KAZAKHSTAN; Globe Telecom Inc., Mandaluyong City, Manila, PHILIPPINES; Gridit, Salo, FINLAND; GridMiddle Ware Spectra, New York, NY; Hansen Corporation Europe, Teddington, Middlesex, UNITED KINGDOM; i2i Bilisim Ve Teknoloji Danismanlik Tic Ltd, Gebze/Kocaeli, TURKEY; Inomial Pty Ltd, Docklands, Victoria, AUSTRALIA; IPDR Technologies, LLC., Golden, CO; iToolsOnline Ltd., Mt Albert, Auckland, NEW ZEALAND; Jamcracker, Inc., Santa Clara, CA; Layer 7 Technologies, Vancouver, British Columbia, CANADA; McShane Consulting, Rolling Meadows, IL; Meteor Mobile Communications, Dublin, IRELAND; MFEC PLC., Bangkok, THAILAND; MHM & Partner AG, Rotkreuz, SWITZERLAND; Mirafor Associates Oy, Helsinki, FINLAND; Nawras, Sultanate of Oman, OMAN; NBNCo Ltd, North Sydney, NSW, AUSTRALIA; Net Evidence (SLM) Ltd, Gomshall, Surrey, UNITED KINGDOM; Nixu Software Oy Ltd., Espoo, FINLAND; Novice Software Solutions, Birhana Road, Kanpur, INDIA; NTC Kft., Budapest, Gombocz Z. u, HUNGARY; OGIS International, Inc., San Mateo, CA; Outbox Sp z.o.o., Warsaw, POLAND; Pacific Broadband Research, Scoresby, Victoria, AUSTRALIA; Parallels, Renton, WA; Parhelion Global Communications Advisors, Amsterdam, THE NETHERLANDS; Pitney Bowes Software Pty Ltd, North Sydney, NSW, AUSTRALIA; Polish Telephones Foundation, Warszawa, POLAND; Prosilient Technologies AB, Stockholm, SWEDEN; Protiviti, Mumbai—400 001, INDIA; PT Global Innovation Technology, Jakarta Selatan, Jakarta, INDONESIA; Rancore Technologies Private Limited, Navi Mumbai, Maharashtra, INDIA; Reach Global Services Limited, Wanchai, HONG KONG—CHINA; RooX LLC, St. Petersburg, RUSSIA; Salesforce.com, San Francisco, CA; Sasktel International, Regina, SK, CANADA; Savvis, Town & Country, MO; ServiceMesh, Inc., Los Angeles, CA; Sonaecom, Lisbon, PORTUGAL; Strategic Consulting Alliance, Amersfoort, THE NETHERLANDS; Superior Consulting Services, Koln, GERMANY; Synaptitude, Vienna, VA; Syntel, Inc., Troy, MI; Tele Greenland, Nuuk, GREENLAND; Telecom ParisTech, Paris, FRANCE; TELEFOCUS SAL, Beirut, LEBANON; Torokina Networks, Artarmon, NSW, AUSTRALIA; Trilogy Software Bolivia, Cochabamba, BOLIVIA; Tvingo Telecom, Vladikavkaz, RUSSIA; University of Texas M.D. Anderson Cancer Center, Houston, TX; VDVL, Rijswijk, THE NETHERLANDS; VenKizmet PERU SAC, Lima, PERU; Vonage, Holmdel, NJ; Worldstream Systems & Services, Port Louis, MAURITIUS; XTRAC, LLC, Boston, MA; Yyield Group BV, Bennebroek, THE NETHERLANDS; ZTEsoft Technology Co., Ltd. Nanjing, Jiangsu, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, Acando AS, Trondheim, NORWAY; AINMT Sverige AB, Taby, Stockholm, SWEDEN; AKT Solutions Ltd., South Croydon, UNITED KINGDOM; Austar Entertainment, Ultimo, NSW, AUSTRALIA; AutoMagic KB LLC, Denver, CO; Averox plc, Uxbridge, Middlesex, UNITED KINGDOM; BEE MediaSoft Limited, HONG KONG–CHINA; Bharti Airtel Ltd, Gurgaon, Haryana, INDIA; BNM Incorporated, Indialantic, FL; Bridgewater Systems Corporation, Ottawa, Ontario, CANADA; Business Connexion (Pty) Ltd., Gauteng, SOUTH AFRICA; cablecom GmbH, Zurich, SWITZERLAND; CANTV, Negocios de Cantv, Edificio Cortijos 1, VENEZUELA; Column Technologies, Downers Grove, IL; CSN Technology Pty Ltd, Eveleigh, NSW, AUSTRALIA; D&A International Limited, Bad Homburg, Hessen, GERMANY; Directorate for Emergency Communication, Oslo, NORWAY; dnp services, Frankfurt, Hesse, GERMANY; Dublin City University, Dublin, IRELAND; eBIZ mobility, Bet Shemesh, ISRAEL; ECtel, Rosh Ha'ayin, ISRAEL; Elisa Corporation, FIN, FINLAND; EMGS Group, Riyadh, SAUDI ARABIA; Empresa De Telecommunicaciones De Bogota S.A.E.S.P, Bogota, COLOMBIA; e-Stratega S.R.L., Olivos, Buenos Aires, ARGENTINA; Ethiopian Telecommunications Corporation, Addis Ababa, ETHIOPIA; FSUE LONIIS, St. Petersburg, RUSSIA; FTS, Herzliya, ISRAEL; Fundação Para Inovações Technológicas—FITec, Recife, PE, BRAZIL; General Post and Telecommunication Company, London, UNITED KINGDOM; GLOCOMP SYSTEMS (M) SDN. BHD., Petaling Jaya, Selangor, MALAYSIA; HIKESIYA Co., Ltd., Yokohama-city, Kanagawa, JAPAN; Hollywood Mobile, Hollywood, CA; ICCE Systems, Cary, NC; Inswitch Solutions, Miami, FL; Integra Consultores C.A., Caracas, Estado Miranda, VENEZUELA; Inteligentis Limited, Maidenhead, Berkshire, UNITED KINGDOM; Intelliden, Inc, Colorado Springs, CO; Ipko Telecommunications LLC, Pristina, Kosovo, SLOVENIA; LIBERTY CABLEVISION OF PUERTO RICO, Luquillo, PUERTO RICO; Liberty Global Inc., Englewood, CO; Libya for Telecom and Technology, Tripoli, LIBYA; Macquarie Telecom, Pty. Ltd., Sydney, NSW, AUSTRALIA; Metrotek, Moscow, RUSSIA; MFlory & Associates, Inc., Barnegat, NJ; Mission Critical, Braine-l'Alleud, BELGIUM; Mobile

TeleSystems OJSC, Moscow, RUSSIA; MTS–Ukraine (UMC), Kiev, UKRAINE; Network Management, Beijng, PEOPLE'S REPUBLIC OF CHINA; NetXForge, Amsterdam, THE NETHERLANDS; Nihon Unisys, Ltd., Tokyo, JAPAN; Nomos Software, Cork, IRELAND; Nortel, Ottawa, Ontario, CANADA; Oblicore, Inc., Columbia, MD; Omnix Software ltd, Bristol, UNITED KINGDOM; one2tribe Sp. z o.o., Michalowice, POLAND; OSS Observer, Durham, NH; Pannon GSM, Budaörs, HUNGARY; Platinion GmbH, Koln, GERMANY; Prio, Inc., Overland Park, KS; Process Management Consulting GmbH, Muenchen, GERMANY; QinetiQ, Farnborough, Hampshire, UNITED KINGDOM; Revenue Assurance Consulting, Borehamwood, Herts, UNITED KINGDOM; RiverMuse, London, UNITED KINGDOM; RRD SRL—Reti Radiotelevisive Digitali Srl, Milano, MI, ITALY; Scartel Star Lab Ltd., St. Petersburg, RUSSIA; SciSys UK Ltd., Chippenham, UNITED KINGDOM; Sentech, Gauteng, SOUTH AFRICA; Serima Consulting sp. z o. o., Gliwice, POLAND; SERVA Software Inc., Wichita Falls, TX; SigmaTao Factory, S.A. de C.V., Queretaro, MEXICO; SL Corporation, Corte Madera, CA; Soapstone Networks, Billerica, MA; Softline, Kiev, UKRAINE; Software AG, Fairfax, VA; Starhub Ltd, Singapore, SINGAPORE; Sun Microsystems, Menlo Park, CA; Sunrise, Zurich, SWITZERLAND; Switchlab, London, UNITED KINGDOM; Sybase SA, Johannesburg, Rivonia, SOUTH AFRICA; TCB Ventures Ltd, Bristol, UNITED KINGDOM; TeamQuest Corporation, Clear Lake, IA; Tejas Networks Ltd, Bangalore, INDIA; Teleconex Comércio e serviços em Telecommunicações Ltda ME, Campinas, São Paulo, BRAZIL; The Business Realignment Company Ltd., Reading, Berks, UNITED KINGDOM; TierOne OSS Technologies Inc., Mississauga, Ontario, CANADA; Toshiba Solutions Corporation, Minato-Ku, Tokyo, JAPAN; TRA, Manama, BAHRAIN; U Mobile Sdn Bhd, Kuala Lumpur, MALAYSIA; UBIqube Solutions, Grenoble, FRANCE; University of Otago, Dunedin, Otago, NEW ZEALAND; University of Strathclyde, Glasgow, Scotland, UNITED KINGDOM; UPC Broadband Operations b.v., Schiphol Rijk, THE NETHERLANDS; UTStarcom, Inc, Alameda, CA; Virtusa Corporation, Westborough, MA; Vitria Technology, Inc., Sunnyvale, CA; Vivo, SA, Sao Pãolo, BRAZIL; VTR GlobalCom, Santiago, RM, CHILE; and ZINC Solutions Inc, Montreal, Quebec, CANADA, have withdrawn as parties to this venture.

The following members have changed their names: TM International Berhad (TMI) to Axiata Group Berhad, Kuala Lumpur, MALAYSIA; usha communications technology to Bonsai Network India Pvt Ltd, West Bengal, INDIA; Access Commerce to Cameleon Software, Skokie, IL; VMOps Inc. to Cloud.com, Cupertino, CA; Globul to Cosmo Bulgaria Mobile EAD(GloBul), Sofia, BULGARIA; CTBC to CTBC Multimidia Data Net S/A minas, Gerais, BRAZIL; Devoteam Consulting A/S to Devoteam Consulting A/S Danish Telecoms Business Unit, Copenhagen, DENMARK; DU to EITC (DU), Dubai, UNITED ARAB EMIRATES; Engineering to Engineering IT, Pont St. Martin, ITALY; Eutelsat to Eutelsat S.A., Paris, FRANCE; GISDATA GROUP to GDI Systems, Inc., Zagreb, CROATIA; Globe Telecom to Globe Telecom Inc., Manila, PHILIPPINES; Hansen Technologies to Hansen Corporation Europe, Middlesex, UNITED KINGDOM; Independent Technology Systems Limited (INTEC) to INTEC Telecom Systems, Surrey, UNITED KINGDOM; Independent consultant to IPDR Technologies, LLC., Golden, CO; Jamcracker to Jamcracker, Inc., Santa Clara, CA; Kara Consulting, ICT Solutions to KARA DANISMANLIK YAZILIM Ve BILISIM TICARET LTD. STI, Istanbul, TURKEY; ClassTel to KlassTel, Moscow, RUSSIA; Moov Benin to Moov Benin SA, Cotonou, COTE D'IVOIRE; MTN Network Solutions (Pty) Limited to MTN Business Solutions (Pty) Limited, Fairland, SOUTH AFRICA; Nixu to Nixu Software Oy Ltd., Espoo, FINLAND; OGIS International to OGIS International, Inc., San Mateo, CA; PacketFront to PacketFront Systems AB, Kista, SWEDEN; Pitney Bowes Business Insight to Pitney Bowes Software Pty Ltd, North Sydney, AUSTRALIA; PromonLogicalis Tecnologia SA to PromonLogicalis Tecnologia E Participacoes Ltda., Sao Pãulo, BRAZIL; Saudi Telecom to Saudi Telecom Company, Riyadh, SAUDI ARABIA; ServiceMesh to ServiceMesh, Inc., Los Angeles, CA; Kvazar-Micro Corporation BV to Sitronics IT, Amsterdam, THE NETHERLANDS; SPATIALinfo to SpatiaIinfo, Inc., Englewood, CO; Specinova Sistemi d.o.o. to Specinova Systems Ltd., Ljubljana, SLOVENIA; Synaptitude Consulting to Synaptitude, Vienna, VA; Tecnotree Convergence Limited to Tecnotree, New Delhi, INDIA; tekten.pl to Tekten Sp. z.o.o.o., Warsaw, POLAND; mobilkom austria group services GmbH to Telekom Austria AG, Wien, AUSTRIA; TMNG to TMNG Global, Overland Park, KS; NZ Communications Ltd. to Two Degrees Mobile Ltd, Auckland, NEW ZEALAND; Telexpertise DeMexico S.A. DE C.V.—TXM to TXM Global Services S.A. de C.V., Saltillo, MEXICO; Ventelo Bedrift AS to Ventelo Networks AS, Oslo, NORWAY; and Network Cadence to Verecloud, Englewood, CO.

In addition, the following parties have changed their locations: Etisalat Nigeria to Banana Island, Ikoyi, Lagos, NIGERIA; Bright Consulting to Sofia, BULGARIA; KARA DANISMANLIK YAZILIM Ve BILISIM TICARET LTD. STI to Istanbul, TURKEY; The CNIA Group to Westfield, NJ; Interfacing Technologies Corp. to Montreal, Quebec, CANADA; OMANTEL to Ruwi, Muscat, OMAN; MTN Cameroon to Douala, Littoral Region, CAMEROON; Rate Integration, Inc. to Durham, NC; IBB Consulting Group to Philadelphia, PA; Datanomic Limited to Cambridge, UNITED KINGDOM; Atos Origin to Zurich, SWITZERLAND; GlobeTOM to HIGHVELD, Centurion, SOUTH AFRICA; Tech Mahindra Ltd to Andheri East, Mumbai, INDIA; ZTE Corporation to Shenzhen, Guangdong, PEOPLE'S REPUBLIC OF CHINA; TMNG Global to Overland Park, KS; Level 3 Communications to Broomfield, CO; Belgacom, S.A. to Brussels, BELGIUM; Aviat Networks to Morrisville, NC; and Logica to Green Park, Reading, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on February 1, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2010 (75 FR 11564).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–26719 Filed 10–21–10; 8:45 am]

BILLING CODE P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 817, from 9 a.m. to 5 p.m., on Thursday, November 4, 2010.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2011.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202–606–8322.

Michael McDonald,

Advisory Committee Management Officer.

[FR Doc. 2010–26780 Filed 10–21–10; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice; retrospective evaluation of the Network for Earthquake Engineering Simulation (NEES).

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Science Foundation will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

ADDRESSES: You may submit comments via regular mail to Dr. Joy Pauschke, National Science Foundation, Suite 545, 4201 Wilson Blvd, Arlington, VA, 22230, or via electronic mail to *jpauschk@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Joy Pauschke, National Science Foundation, Suite 545, 4201 Wilson Blvd, Arlington, VA, 22230, or call non-toll-free number 703–292–8360, or email your request, including your address to: *jpauschk@nsf.gov.*

DATES: Written comments on this notice must be received by December 21, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION:

Proposed Collection

Title: Retrospective Evaluation of the Network for Earthquake Engineering Simulation.

Type of Information Collection Request: New collection.

Need and Use of Information Collection: The purpose of the proposed information collection is to inform decision making regarding the future of NSF support for earthquake engineering research infrastructure beyond 2014. Information will be collected from NEES leaders and researchers regarding: (1) The current capabilities of the NEES network relative to the needs of the research community; (2) characteristics of the users of NEES facilities and resources; (3) strengths and weaknesses of program design and implementation; (4) costs and benefits of the consortium model currently employed by NEES relative to alternatives; (5) effectiveness of recent changes to consortium design at achieving their intended results; and (6) program outputs and outcomes to date. Results of the retrospective evaluation will be reviewed by NSF staff as well as a panel of distinguished experts in the field of earthquake engineering who will make recommendations to NSF about the future of the program.

Frequency of Response: Once.

Affected Public: Individuals.

Type of Respondents: NSF grantees. The annual reporting burden is as follows: *Estimated Number of Respondents:* 133. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 0.65. *Estimated Total Annual Burden Hours Requested:* 87. The annualized cost to respondents is estimated at: $3,387.78. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Dated: October 15, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–26527 Filed 10–21–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130)

Date/Time: Wednesday, November 10, 2010, 1 p.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA. The Advisory Committee Members will attend virtually.

Type of Meeting: Open.

Contact Person: Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities on the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

Agenda: Staff presentations and discussion on Committee of Visitor's reports; USAP Antarctic Program review; Strategic Planning; planning for a Polar Research Vessel.

Dated: October 19, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–26691 Filed 10–21–10; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–19; Order No. 562]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add another Global Expedited Package Services 3 (MC2010–28) contract to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: October 25, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:ww.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6824.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On October 14, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) contract.[1] The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS contracts, and is supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1–2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the instant contract is in accordance with Order No. 86. The Postal Service states the instant contract is the immediate successor to the contract in Docket No. CP2010–10 that is scheduled to expire November 30, 2010. It explains that the mailer has already met the minimum commitment under its current contract and upon regulatory approval of the instant contract, the current contract will be terminated and an effective date for the new contract will be confirmed. Notice at 3. The term of the instant contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. *Id.* at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract and applicable annexes;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contract fits within the Mail Classification Schedule language for the GEPS 3 product. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contract from the baseline GEPS 3 agreement. *Id.* at 4–5. It states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contract's functional equivalency. *Id.* at 3–4. The Postal Service asserts that "[b]ecause the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this GEPS contract is similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.* at 4.

The Postal Service concludes that its filings demonstrate that this new GEPS 3 contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contract be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket No. CP2011–19 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than October 25, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

1. The Commission establishes Docket No. CP2011–19 for consideration of matters related to the contract identified in the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than October 25, 2010.

3. Pursuant to 39 U.S.C. 505, Natalie Rea is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–26723 Filed 10–21–10; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, October 14, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

RAILROAD RETIREMENT BOARD

Agency Information Collection Activities: Proposed Collections; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections. The information collections numbered below are pending at RRB and will be submitted to the Office of Management and Budget (OMB) 60 days from the publication date of this notice.

Comments are Invited on: (a) Whether the proposed information collection(s) is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and Purpose of Information Collection.*

Railroad Service and Compensation Reports/System Access Application; OMB 3220–0008 Under Section 9 of the Railroad Retirement Act (RRA) and Section 6 of the Railroad Unemployment Insurance Act (RUIA) the Railroad Retirement Board (RRB) maintains for each railroad employee, a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statue of limitations cited in Section 9 of the RRA and Section 6 of the RUIA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. Railroad Employers' Reports and Responsibilities are prescribed in 20 CFR 209. The RRB currently utilizes Form BA–3, *Annual Report of Compensation* and Form BA–4, *Report of Creditable Compensation Adjustments,* to secure required information from railroad employers. Form BA–3 provides the RRB with information regarding annual creditable service and compensation for each individual who worked for a railroad employer covered by the RRA and RUIA in a given year. Form BA–4 provides for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted. Requirements specific to Forms BA–3 and BA–4 are prescribed in 20CFR 209.8 and 209.9.

Employers currently have the option of submitting the reports on the aforementioned forms, electronically by File Transfer Protocol (FTP), secure E-mail or via the Internet utilizing the RRB's Employer Reporting System (ERS) (for Form BA–4), or in like format on magnetic tape cartridges, CD–ROM's and PC diskettes. The RRB proposes no changes to Form BA–3 or BA–4.

The information collection also includes RRB Form BA–12, Application for Employer Reporting Internet Access and Form G–440, Report Specifications Sheet. Form BA–12 is completed by railroad employers to obtain system access to the RRB's Employer Reporting System (ERS). Once access is obtained, authorized employees may submit reporting forms to the RRB via the Internet. The form determines what degree of access (view/only, data entry/modification or approval/submission) is appropriate for that employee. It is also used to terminate an employee's access to ERS. The RRB proposes no changes to Form BA–12. Form G–440, Report Specifications Sheet, serves as a certification document for various RRB employer reporting forms (Forms BA–3, BA–4, Form BA–6a, BA–6, Address Report (OMB 3220–0005), BA–9, Report of Separation Allowance or Severance Pay (OMB 3220–0173) and BA–11, Report of Gross Earnings (OMB 3220–0132)). It records the type of medium the report was submitted on, and serves as a summary recapitulation sheet for reports filed on paper.

The estimated completion times for Form(s) BA–3, BA–4, BA–12 and G–440 vary, depending on circumstances and the method of submission. The completion time for Form BA–3 is estimated at 46 hours and 15 minutes per response for electronic submissions to 116 hours and 51 minutes for manual responses. The completion time for Form BA–4 is estimated at 20 minutes for an ERS Internet-based response, 60 minutes for an electronic submission (magnetic tape cartridge, CD–ROM, diskette, secure E-mail, FTP) and 75 minutes for a manual response. The completion time for form BA–12 is estimated at 10 minutes when used to terminate system access and 20 minutes when used to obtain system access. The completion time for Form G–440 is estimated at 15 minutes when submitted with a paper form and/or used to file a "zero" or "no employees" certification, 30 minutes when used as an electronic medium reporting/certification form, and 1 hour and 15 minutes when used as a certification and recapitulation form. Submission of Form BA–3, BA–4, and G–440 is mandatory. Completion of Form BA–12 is voluntary. It is completed only if an employer wants to submit reports via the Internet. One response is requested of each respondent for all of the forms in the collection. Depending on circumstances and method of submission chosen, multiple responses will be received from a respondent for Form BA–4 and G–440. The annual respondent burden for the information collection is estimated at 7,348 responses and 43,756 hours.

2. *Title and Purpose of Information Collection.* Employer Reporting, 3220–0005.

Under Section 9 of the Railroad Retirement Act (RRA), and Section 6 of the Railroad Unemployment Insurance Act (RUIA), railroad employers are required to submit reports of employee service and compensation to the RRB as needed for administering the RRA and RUIA. To pay benefits due on a deceased employee's earnings records or determine entitlement to, and amount of annuity applied for, it is necessary at times to obtain from railroad employers current (lag) service and compensation not yet reported to the RRB through the annual reporting process. The reporting requirements are specified in 20 CFR 209.6 and 209.7.

The RRB currently utilizes Form G–88a.1, Notice of Retirement and Verification of Date Last Worked, Form G–88a.2, Notice of Retirement and Request for Service Needed for Eligibility, and Form AA–12, Notice of Death and Compensation, to obtain the required lag service and related information from railroad employers. Form G–88a.1 is a computer-generated listing sent by the RRB to railroad employers and used for the specific purpose of verifying information previously provided to the RRB regarding the date last worked by an employee. If the information is correct, the employer need not reply. If the information is incorrect, the employer is asked to provide corrected information.

Form G–88a.2 is used by the RRB to secure lag service and compensation information when it is needed to determine benefit eligibility. Form AA–12 obtains a report of lag service and compensation from the last railroad employer of a deceased employee. This report covers the lag period between the date of the latest record of employment processed by the RRB and the date an employee last worked, the date of death or the date the employee may have been entitled to benefits under the Social Security Act. The information is used by the RRB to determine benefits due on the deceased employee's earnings record. The RRB proposes no changes to Form AA–12, Form G–88a.1 and Form G–88a.2.

In addition, 20 CFR 209.12(b) requires all railroad employers to furnish the RRB with the home addresses of all employees hired within the last year (new-hires). Form BA–6a, Form BA–6 Address Report, is used by the RRB to obtain home address information of employees from railroad employers that do not have the home address information computerized and who submit the information in a paper format. The form also serves as an instruction sheet to railroad employers who can also submit the information electronically by magnetic tape cartridge, CD–ROM, PC diskette, secure E-mail, or via the Internet utilizing the RRB's Employer Reporting System (ERS). The RRB proposes no changes to Form BA–6a.

Completion of the forms is mandatory. One response is requested of each respondent. The completion time for Form G–88a.1 is estimated at 5 to 20 minutes. Form G–88a.2 is estimated at 5 minutes per response. Form AA–12 is estimated at 5 minutes per response. The completion time for Form BA–6a varies, depending on circumstances and the method of submission. An Internet-based BA–6a response utilizing the RRB's ERS system is estimated at 12 to 17 minutes. BA–6a responses submitted via magnetic tape, diskette, CD–ROM, secure E-mail and FTP are estimated at 15 minutes. BA–6a's responses submitted on manual form BA–6a are estimated at 32 minutes. The annual respondent burden for the information collection is estimated at 2,748 responses and 502 hours.

3. *Title and Purpose of Information Collection.* Railroad Separation Allowance or Severance Pay Report; OMB 3220–0173.

Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. Also, Section 4 (a–1)(iii) of the Railroad Unemployment Insurance Act provides that a railroad employee who is paid a separation allowance is disqualified for unemployment and sickness benefits for the period of time the employee would have to work to earn the amount of the allowance. The reporting requirements are specified in 20 CFR 209.14.

In order to calculate and provide payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9 to obtain information from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. Employers currently have the option of submitting a paper BA–9, (or in like format) a magnetic tape cartridge, CD–ROM or PC diskette or electronically by File Transfer Protocol (FTP) or secure E-mail. Completion is mandatory. One response is requested of each respondent.

The RRB proposes no changes to Form BA–9. The completion time for Form BA–9 and all electronic equivalent methods of submission is estimated at 1 hour and 16 minutes. The annual respondent burden for the information collection is estimated at 360 responses and 457 burden hours.

4. *Title and Purpose of Information Collection.* Gross Earnings Report; OMB 3220–0132.

In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually from railroad employers the gross earnings for their employees on a one-percent basis, i.e., 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits "30." The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Centers for Medicare and Medicaid Services. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalent(s) to obtain gross earnings information from railroad employers. Employers have the option of preparing and submitting BA–11 reports on paper, (or in like format) on magnetic tape cartridges and PC diskettes, or by File Transfer Protocol (FTP) or secure E-mail. Completion is mandatory. One response is requested of each respondent. The RRB proposes no changes to Form BA–11.

The RRB estimates the completion time for BA–11 information as follows: 5 hours for BA–11 responses submitted via File Transfer Protocol and magnetic tape and 30 minutes for BA–11's submitted via paper, diskette, and secure E-mail. The annual respondent burden for the information collection is estimated at 169 responses and 121 burden hours.

5. *Title and Purpose of Information Collection.* Application and Claim for Unemployment Benefits and Employment Service; OMB 3220–0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days).

Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325.

The RRB utilizes the following forms to collect the information necessary to pay unemployment benefits: Form UI–1 (or its Internet equivalent, Form UI–1 (Internet)), *Application for Unemployment Benefits and Employment Service,* is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 or UI–1 (Internet) also registers an unemployment claimant for the RRB's employment service. The RRB proposes no changes to Form UI–1 or UI–1 (Internet).

The RRB also utilizes Form UI–3, (or its Internet equivalent Form UI–3 (Internet)) *Claim for Unemployment Benefits* for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days. The RRB proposes no changes to Form UI–3 or UI–3 (Internet).

Completion of Forms UI–1, UI–1 (Internet), UI–3 and UI–3 (Internet) is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment. The RRB estimates that approximately 16,163 Form UI–1's (12,747 manual and 3,416 Internet) will be filed annually. Completion time for Form UI–1 and UI–1 (Internet) is estimated at 10 minutes. The RRB estimates that approximately 146,168 Form UI–3's (108,217 manual and 37,951 Internet) will be filed annually. Completion time for Form UI–3 and the UI–3 (Internet) is estimated at 6 minutes. The total annual respondent burden for the information collection is estimated at 162,331 responses and 17,311 burden hours.

Additional Information or Comments: To request more information regarding any of the information collections listed above or to obtain copies of the information collection justifications, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collections should be sent to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV.* Comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–26523 Filed 10–21–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12353 and #12354]

North Carolina Disaster #NC–00030

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1942–DR), dated 10/14/2010.

Incident: Severe storms, flooding, and straight-line winds associated with remnants of Tropical Storm Nicole.

Incident Period: 09/27/2010 through 10/01/2010.

Effective Date: 10/14/2010.

Physical Loan Application Deadline Date: 12/13/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/14/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/14/2010, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Beaufort, Bertie, Craven, Hertford, Onslow, Tyrrell.

Contiguous Counties (Economic Injury Loans Only):

North Carolina: Carteret, Chowan, Dare, Duplin, Gates, Halifax, Hyde, Jones, Lenoir, Martin, Northampton, Pamlico, Pender, Pitt, Washington.

Virginia: Southampton.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 123536 and for economic injury is 123540.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–26778 Filed 10–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12351 and #12352]

Minnesota Disaster # MN–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Minnesota dated 10/15/2010.

Incident: Severe storms and flooding.

Incident Period: 09/22/2010 through 09/23/2010.

Effective Date: 10/15/2010.

Physical Loan Application Deadline Date: 12/14/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/15/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Martin, Olmsted, Steele, Wabasha.

Contiguous Counties:

Minnesota: Blue Earth, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Jackson, Mower, Rice, Waseca, Watonwan, Winona.

Iowa: Emmet, Kossuth.

Wisconsin: Buffalo, Pepin.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000

	Percent
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 123516 and for economic injury is 123520.

The States which received an EIDL Declaration # are Minnesota, Iowa, Wisconsin.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 15, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–26779 Filed 10–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12279 and # 12280]

Iowa Disaster Number IA–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA—1930—DR), dated 08/14/2010.

Incident: Severe storms, flooding, and tornadoes.

Incident Period: 06/01/2010 through 08/31/2010.

Effective Date: 10/13/2010.

Physical Loan Application Deadline Date: 11/12/2010.

EIDL Loan Application Deadline Date: 05/16/2011.

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 IOWA, dated 08/14/2010 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/12/2010.

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. 2010–26781 Filed 10–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12279 and # 12280]

Iowa Disaster Number IA–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1930–DR), dated 08/14/2010.

Incident: Severe storms, flooding, and tornadoes.

Incident Period: 06/01/2010 through 08/31/2010.

Effective Date: 10/15/2010.

Physical Loan Application Deadline Date: 11/12/2010.

EIDL Loan Application Deadline Date: 05/16/2011.

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 Presidential disaster declaration for the State of Iowa, dated 08/14/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Boone, Calhoun, Shelby.

Contiguous Counties: (Economic Injury Loans Only):

Iowa: Audubon, Carroll, Cass, Harrison, Pottawattamie.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–26794 Filed 10–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12357 and #12358]

Connecticut Disaster #CT–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Connecticut dated 10/18/2010.

Incident: Severe storm and tornado.

Incident Period: 06/24/2010.

Effective Date: 10/18/2010.

Physical Loan Application Deadline Date: 12/17/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/18/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fairfield.

Contiguous Counties: Connecticut: Litchfield, New Haven.

New York: Dutchess, Putnam, Westchester.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12357 C and for economic injury is 12358 O.

The States which received an EIDL Declaration # are Connecticut; New York.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 18, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–26792 Filed 10–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12349 and #12350]

Minnesota Disaster #MN–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance only for the State of Minnesota (FEMA–1941–DR), dated 10/13/2010.

Incident: Severe storms and flooding.

Incident Period: 09/22/2010 and continuing.

Effective Date: 10/13/2010.

Physical Loan Application Deadline Date: 12/13/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/13/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/13/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Blue Earth, Cottonwood, Dodge, Faribault, Freeborn, Goodhue, Jackson, Lincoln, Lyon, Martin, Mower, Murray, Olmsted, Pipestone, Rice, Rock, Steele, Wabasha, Waseca, Watonwan, Winona.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12349B and for economic injury is 12350B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–26786 Filed 10–21–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12355 and #12356]

New York Disaster #NY–00093

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance only for the State of New York (FEMA–1943–DR), dated 10/14/2010.

Incident: Severe storms, tornadoes, and straight-line winds.

Incident Period: 09/16/2010.

Effective Date: 10/14/2010.

Physical Loan Application Deadline Date: 12/13/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/14/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/14/2010, private non-profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kings, Queens, Richmond.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12355B and for economic injury is 12356B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–26784 Filed 10–21–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–3(a)(16); SEC File No. 270–452; OMB Control No. 3235–0508.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 17a–3(a)(16) (17 CFR Sec. 240.17a–3(a)(16)) under the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78q *et seq.*) identifies the records required to be made by broker-dealers that operate internal broker-dealer systems. Those records are to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules, as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 105 active broker-dealer respondents registered with the Commission incur an average burden of 2,835 hours per year (105 respondents multiplied by 27 burden hours per respondent equals 2,385 total burden hours) to comply with this rule.[1]

Rule 17a–3(a)(16) does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member. 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 control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Jeffrey Heslop, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 18, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26678 Filed 10–21–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation S–AM; SEC File No. 270–548; OMB Control No. 3235–0609.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for in Regulation S–AM (17 CFR part 248, subpart B), under the Fair and Accurate Credit Transactions Act of 2003 (Pub. L. 108–159, Section 214, 117 Stat. 1952 (2003)) ("FACT Act"), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–AM implements the requirements of Section 214 of the FACT Act as applied to brokers, dealers, and investment companies, as well as investment advisers and transfer agents that are registered with the Commission (collectively, "Covered Persons"). As directed by Section 214 of the FACT Act, before a receiving affiliate may make marketing solicitations based on the communication of certain consumer financial information from a Covered Person, the Covered Person must provide a notice to each affected individual informing the individual of his or her right to prohibit such marketing. The regulation potentially applies to all of the approximately 21,496 Covered Persons registered with the Commission, although only approximately 12,038 of them have one or more corporate affiliates, and the regulation would require only approximately 2,150 to provide consumers with notice and an opt-out opportunity.

The Commission staff estimates that there are approximately 12,038 Covered Persons having one or more affiliates, and that they would require an average one-time burden of 1 hour to review affiliate marketing practices, for a total of 12,038 hours, at a total staff cost of approximately $2,527,929. The staff also estimates that approximately 2,150 Covered Persons would be required to provide notice and opt-out opportunities to consumers, and would incur an average first-year burden of 18 hours in doing so, for a total estimated first-year burden of 38,700 hours, at a total staff cost of approximately $10,294,200. With regard to continuing notice burdens, the staff estimates that each of the approximately 2,150 Covered Persons required to provide notice and opt-out opportunities to consumers would incur a burden of approximately 4 hours per year to create and deliver notices to new consumers and record any opt outs that are received on an ongoing basis, for a total of 8,600 hours, at a total staff cost of approximately $490,200 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Jeffrey Heslop, Acting Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 13, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26679 Filed 10–21–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63121; File No. SR–Phlx–2010–119]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change To Amend Exchange Rule 652 ("Limitation of Exchange Liability and Reimbursement of Certain Expenses") To Require Member Organizations on the Exchange's Trading Floor To Procure and Maintain Liability Insurance

October 18, 2010.

I. Introduction

On September 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule

[1] The average cost per hour is $258. Therefore the total cost of compliance for the respondents is $731,430.

[1] 15 U.S.C. 78s(b)(1).

19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 652 ("Limitation of Exchange Liability and Reimbursement of Certain Expenses") to require member organizations on the Exchange's trading floor to procure and maintain liability insurance. The proposed rule change was published for comment in the **Federal Register** on September 17, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to require that member organizations located on the Exchange's trading floor procure and maintain liability insurance by December 31, 2010. The insurance would provide defense and indemnity coverage for the member organization, any person associated with the member organization and the Exchange for any action or proceeding brought, or claim made, to impose liability upon the member organization, associated person or the Exchange which results from the member organization's or associated person's conduct.

According to the Exchange, it does not intend this amendment to provide relief associated with financial loss related to buying and selling securities; the insurance coverage is intended to provide coverage to the Exchange for its sole, concurrent, or contributory negligence or other wrongdoing connected to a claim arising from the member organization's or associated person's conduct. The member organization would be required to maintain insurance with a limit that is not less than $1,000,000 without erosion by defense costs. Each member organization located on the trading floor would be required to provide a certificate of insurance to be issued directly to the Exchange demonstrating the insurance was procured and is maintained. The Exchange also proposes to expand the language in Rule 652 to apply the rule to individuals of the Exchange, specifically officers, directors and employees. The Exchange believes that this change will clarify that individuals serving as officers, directors or employees are also the subject of Rule 652.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the proposed rule change be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes that the proposed rule change is a reasonable means of protecting the Exchange's financial resources that are normally used to support the Exchange's surveillance and self-regulatory responsibilities, rather than having this capital diverted to defending litigation claims.

The Commission believes that requiring member organizations to obtain insurance coverage to protect the Exchange from claims resulting from their own conduct is not an undue burden. Furthermore, the Commission believes that the proposed rule change may conserve Exchange capital resources, and will provide additional coverage for member organizations since the member organizations are within the scope of the required insurance's coverage.

Finally, the Commission believes that amending Exchange Rule 652 to add officers, directors and employees in addition to the Exchange will remove any ambiguity or confusion by explicitly stating that the word "Exchange" as used in Rule 652 includes such individuals.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [6] that the proposed rule change (SR–Phlx–2010–119) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26676 Filed 10–21–10; 8:45 am]

BILLING CODE 8011–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62892 (September 10, 2010), 75 FR 57090.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63122; File No. SR–BATS–2010–028]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposal To Make Clean Up Changes by Amending Certain Rules

October 18, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 2.3 to clarify that a broker or dealer must be a member of another national securities exchange or association other than BATS Y–Exchange, Inc. ("BYX") in order to become or remain a Member of the Exchange, to remove the text of Rule 2.4 because the waive-in period for the Exchange has expired, and to make a technical correction to BATS Rule 14.5. The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BATS Rule 2.3 to clarify that a broker or dealer be a member of another national securities exchange or association other than or in addition to the Exchange's affiliate, BYX, in order to become or remain a Member of the Exchange. The Exchange also proposes to remove the text of BATS Rule 2.4 because the rule has become obsolete as the period for submission of a waive-in membership application has expired. Lastly, the Exchange proposes to make a technical correction to BATS Rule 14.5(c) to replace a reference to "Commodity-Based Trust Shares" with "Currency Trust Shares".

Amend Rule 2.3 To Reflect Existence of BATS Y–Exchange

The Exchange requires all of its Members to be a member of at least one other national securities association or national securities exchange. The proposed change would make clear that this requirement is not satisfied simply by joining the Exchange's affiliated exchange, BYX. Rather, as the proposed language indicates, each Member that is a registered broker or dealer must be a member of another registered national securities exchange or association other than or in addition to BYX.

Deletion of Obsolete Rule—BATS Rule 2.4

As approved by the Commission as part of the Exchange's Form 1 application, BATS Rules include provisions that permitted current or former subscribers to the electronic communications network formerly operated by BATS Trading, Inc. to apply to become a Member of the Exchange by submitting a "waive-in application" within ninety (90) days of approval of the Form 1 by the Commission. The Commission approved the Exchange's Form 1 application on August 18, 2008, meaning that waive-in membership applications must have been received by the Exchange on or prior to November 16, 2008. Accordingly, BATS Rule 2.4 is obsolete, and thus, the Exchange proposes to delete such rule.

Correct Improper Term in BATS Rule 14.5(c)

Lastly, the Exchange proposes to correct language in BATS Rule 14.5(c) to replace an incorrect reference to "Commodity-Based Trust Shares" with "Currency Trust Shares".

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed changes are consistent with Section 6(b)(5) of the Act,[6] because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[9] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[10] Such waiver will result in immediate improvement to the Exchange's rules by clarifying vague language, removing inoperative language, and correcting a technical inaccuracy. The Commission believes such improvements should be implemented immediately, rather than delayed for 30 days. Additionally, the proposed rule change does not raise any new regulatory issues. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2010–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2010–028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2010–028 and should be submitted on or before November 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26677 Filed 10–21–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7213]

Notice Convening an Accountability Review Board To Examine the Circumstances of the Death of Three DoD Personnel Assigned to the U.S. Embassy's Office of Defense Representative Pakistan (ODRP) on February 3, 2010

Pursuant to Section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C. 4831 *et seq.*), the Secretary of State has determined that a recent attack on three Department of Defense personnel assigned to the U.S. Embassy's Office of Defense Representative Pakistan (ODRP) involved loss of life that was at or related to a U.S. mission abroad. Therefore, the Secretary has convened an Accountability Review Board to examine the facts and the circumstances of the attacks and to report to me such findings and recommendations as it deems appropriate.

The Secretary has appointed Joseph Lake, a retired U.S. ambassador, as Chair of the Board. He will be assisted by Robert Bryson, Lewis Atherton, Barbara Martin, Wayne Rychak and by the Executive Secretary to the Board, Linda Hartley. They bring to their deliberations distinguished backgrounds in government service and/or the private sector.

The Board will submit its conclusions and recommendations to Secretary Clinton within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of these incidents should contact the Board promptly at (202) 647–5204 or send a fax to the Board at (202) 647–3282.

This notice shall be published in the **Federal Register**.

Dated: October 8, 2010.

Patrick F. Kennedy,

Under Secretary for Management.

[FR Doc. 2010–26791 Filed 10–21–10; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0135]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 21, 2010.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the Docket Management System.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility; U. S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery/Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. Telephone: 1–800–647–5527.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room W12–140 on the ground level of the DOT Building, 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Hisham Mohamed, NHTSA, 1200 New Jersey Avenue, SE., West Building, Room # W43–437, NVS–131, Washington, DC 20590. Mr. Mohamed's telephone number is (202) 366–0307. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR 575.104; Uniform Tire Quality Grading Standard.

OMB Control Number: 2127–0519.

Affected Public: All passenger car tire manufacturers and brand name owners offering passenger car tires for sale in the United States.

Form Number: The collection of this information uses no standard form.

Abstract: Part 575 requires tire manufacturers and tire brand owners to submit reports to NHTSA regarding the UTQGS grades of all passenger car tire lines they offer for sale in the United States. This information is used by consumers of passenger car tires to compare tire quality in making their purchase decisions. The information is provided in several different ways to insure that the consumer can readily see and understand the tire grade: (1) The grades are molded into the sidewall of the tire so that they can be reviewed on both the new tire and the old tire that is being replaced; (2) a paper label is affixed to the tread face of the new tire that provides the grade of that particular tire line along with an explanation of the grading system; (3) tire manufacturers provide dealers with brochures for public distribution listing the grades of all of the tirelines they offer for sale; and (4) NHTSA compiles the grading information of all manufacturers' tirelines into a booklet that is available to the public both in printed form and on the Web site.

Estimated Annual Burden: NHTSA estimates that a total of 88,320 man-hours are required to write the brochures, engrave the new passenger car tire molds, and affix the paper labels to the tires. Based on an average hourly rate of $22 per hour for rubber workers in the United States, the cost to the manufacturers is $1,943,040 to perform those items listed above. The largest portion of the cost burden imposed by the UTQGS program arises from the testing necessary to determine the grades that should be assigned to the tires. An average of 125 convoys, driven 7,200 miles each, consisting of four vehicles and four drivers, are run each year for treadwear testing. NHTSA estimates it cost $0.60 per vehicle mile including salaries, overhead and reports. This brings the annual treadwear testing cost to $2,160,000. For the traction testing, it is estimated that 1,750 tires are tested annually with an estimated cost of $38,500 for use of the government test facility. Using a factor of 3.5 times to cover salary and overhead of test contractors, the estimated cost of traction testing is $134,750. A separate temperature grade testing for tires is required, since the test is no more an extension of the high speed performance test of 49 CFR 571.109 which was required for safety certification. Section 571.109 is replaced by § 571.139, which has different test speeds. For the temperature testing, it is estimated that 1,750 tires are tested annually with an estimated average cost per test of $423. Therefore, the estimated UTQGS temperature annual testing is $740,250. Thus the total estimated cost for UTQGS testing is $3,035,000. The cost of printing the tread labels is approximately $21,340,000 and the estimate for printing brochures is at $999,000. This yields a total annual financial burden of approximately $25,374,000 (approximately $25.5 million) on the tire manufacturers.

Estimated Annual Burden to the Government: The estimated annual cost of UTQGS to the Federal government is $1,278,000. The cost consists of approximately $152,000 for data management, $730,000 for enforcement testing, and about $396,000 for general administration of the program.

Number of Respondents: There are approximately 160 individual tire brands sold in the United States. The actual number of respondents is much less than 160 due to company acquisitions, mergers, and in most cases, the manufacturer will report for the various individual brand names that they produce tires for. The actual number of respondents is approximately 45 individual responses.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: October 19, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–26714 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–47]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR part 43. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 1, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1057 using any of the following methods:

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• Fax: Fax comments to the Docket Management Facility at 202–493–2251.

• Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Haley, Office of Rulemaking, ARM–203, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–5708, facsimile (202) 267–5075; e-mail *Katherine.L.Haley@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 18, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–1057.

Petitioner: Gulfstream Aerospace Corporation.

Sections of 14 CFR Affected: § 91.817.

Description of Relief Sought: Gulfstream Aerospace Corporation seeks relief to allow certain flight tests to exceed Mach 1.

[FR Doc. 2010–26594 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northeast Illinois Commuter Railroad Corporation

[Waiver Petition Docket Number FRA–2010–0150]

The Northeast Illinois Commuter Railroad Corporation (Metra) seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.21, 229.23(d), 229.27(a)(3), and 229.29(a). Also, from the Passenger Equipment Safety Standards, 49 CFR 238.19, 238.303, 238.305, and 238.307 as they pertain to record-keeping and employee signatures. Metra seeks to keep locomotive Daily Inspection, Periodic Inspection, Annual Tests, and Biennial tests records in a centralized database, and provide for employees performing these inspections to utilize electronic signatures. These electronic records would be available at the various mechanical facilities where hard copies of the records are now maintained. FRA does not see a need to grant a waiver from the record-keeping requirements of the Passenger Equipment Safety Standards which already allows for electronic record-keeping.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010-0150) and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC, on October 18, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–26682 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

BNSF Railway Company and Ferrocarril Mexican Railway Company

[Waiver Petition Docket Number FRA–2010–0126)]

The BNSF Railway Company (BNSF) and Ferrocarril Mexican Railway Company (FXE) seek a test waiver of compliance from the requirements of 49 CFR 232.205 Class I Brake Test, Initial terminal inspection; 232.409—Inspection and testing of end-of-train devices; and 215.13—Pre-departure Inspection. This test waiver is necessary to allow tests and inspections conducted at Rio Escondido and

Torreon, Mexico, by FXE on northbound unit trains to be considered valid for run-through trains interchanged with BNSF at Eagle Pass, Texas, and bound for Temple, Texas. FXE Carmen will perform all Class 1 initial terminal inspections and repairs, and will comply with all parts of 49 CFR 232 and 215, as well as all applicable Association of American Railroads interchange rules. With this test waiver, BNSF and FXE seek to establish to FRA's satisfaction that cross-border commerce can be safely increased by eliminating the congestion of traffic that presently occurs at the border.

BNSF and FXE expect to demonstrate, with this test waiver, that Class 1 initial terminal inspections performed in Mexico by FXE carmen are equally on par with Class 1 initial terminal inspections performed by U.S. railroads to comply with Federal regulation. BNSF and FXE state that the available inspection track on the U.S. side of the border is rudimentary at best with no option for expansion from adjacent landholders, while work environment enhancements are offered at FXE's Rio Escondido and Torreon facilities.

The FXE Rio Escondido facility is a new and modern facility built to facilitate international rail commerce, equipped with the latest in freight car repair technology and tooling, and is staffed with trained and motivated employees. BNSF estimates risk in the work environment is halved by performing inspections and repairs at Rio Escondido or Torreon, as compared to the present U.S. facility.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0126) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on October 18, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–26683 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian Pacific Railway

[Waiver Petition Docket Number FRA–2010–0024]

The Canadian Pacific Railway (CP) hereby petitions FRA for a temporary waiver from 49 CFR Part 213, subpart C, to develop and test pilot an "unattended" track geometry measurement system. Over the course of 6 months, CP intends to test the new system on their Northeast U.S. main line between Rouses Point and Binghamton, New York, a distance of approximately 315 miles. The project includes outfitting and deploying an unattended track geometry measurement system that will be used in conjunction with other automated systems to monitor overall track infrastructure condition on a frequency that is not possible today.

CP asserts that the benefits that are expected to be derived from this system are as follows:

- Increased geometry inspections over what is possible today (anticipated 400% increase) resulting in improved infrastructure reliability;
- Proactive instead of reactive track maintenance will result in improved infrastructure condition and therefore a safer operation;
- Scheduled maintenance and repair activities will reduce unscheduled employee call outs and therefore also reduce fatigue related risk to employees;
- Reduction of track geometry which will cause slow orders; and
- Improved passenger train performance at a reduced level of risk.

The project is currently in the planning phase. CP indicates that if FRA agrees, the build, design and test phase of the project could commence in late 2010. Testing would then occur in early 2011. It is the testing phase of the project that is the subject of this waiver application. In order to proceed with this pilot project, CP is seeking a temporary waiver from 49 CFR part 213, subpart C, such that all measurements and data produced by the new track geometry vehicle are deemed "not valid" and "immaterial" for the purpose of track geometry verification. The data produced during the 6 month test period will be used solely for the purposes of mapping and for false positive rejection development, and CP is requesting regulatory relief for the initial 6-month period when the new equipment is being evaluated and tested.

CP further explains that it will adhere to all regulated track inspection processes while the new track geometry equipment is being tested. All track defects identified through the normal inspection processes will be corrected according to current processes and procedures designed to comply with FRA's track safety standards. The waiver that is being requested will only apply to information that is developed through the use of the new geometry technology during the initial 6 month testing and evaluation phase of the project.

CP further explains that it does not expect that the waiver would apply to the regular, manned track geometry inspection, which CP will continue to perform 3 times annually until such time as the new technology is proven reliable. Following the 6 month testing and evaluation phase of the project and assuming that the benefits of the system prove out, CP indicates that it request further regulatory relief from FRA.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0024) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on October 18, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–26783 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2010–0145]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of 49 CFR part 232, Brake System Safety Standards. Specifically, UP has petitioned FRA for a determination that the engineering principles used in its design of its Continuous Speed Control Yard located at Roseville, California, are a sufficient primary retarder to prevent equipment rollouts and act as an acceptable form of alternate securement under 49 CFR 232.103(n)(1), Securement of unattended equipment.

UP states that the Continuous Speed Control System is unique from conventional hump yards because thousands of small piston capsule retarders (in lieu of the use of two or three large retarders) are strategically located to control each freight car's speed to deliver into its assigned track at a safe coupling speed. This use of capsule retarders allow for a streamline yard design which allows more moderate curves, a lower hump, and gentler grades resulting in lower speeds in the switching area. UP additionally states that the design elements of the Continuous Speed Control System meets American Railway Engineering and Maintenance-of-Way Association (AREMA) practice for safe and effective operation as presented in Section 2.4 of the AREMA Manual for Railway Engineering. UP also states that the design of Roseville yard is improving safety by eliminating the need to have employees enter the active bowl tracks and tie additional handbrakes. Therefore, UP seeks a determination that the engineering principles used in its design of Roseville yard are sufficient to be an acceptable form of primary securement when combined with the use of skates as secondary securement.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0145) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC, on October 18, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–26681 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0093]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FINALLY US.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0093 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 22, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0093. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FINALLY US is:

Intended Commercial Use Of Vessel: "Uninspected Passenger Vessel Cruising."

Geographic Region: "California."

Privacy Act Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: October 14, 2010.

By Order of the Maritime Administration.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–26675 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0094]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel EMPRESS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0094 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 22, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0094. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel EMPRESS is:

Intended Commercial Use of Vessel: "Limited private charters."

Geographic Region: "California, Oregon, Washington."

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: October 14, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–26680 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC 187–1D]

Schedule of Charges Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of Advisory Circular (AC) 187–1D which transmits an updated schedule of charges for services of FAA Flight Standards Aviation Safety Inspectors outside the United States. The advisory circular has been updated in accordance with the procedures listed in 14 CFR part 187, Appendix A.

DATES: This AC is effective on October 1, 2010.

ADDRESSES: *How to obtain copies:* A copy of this publication may be downloaded from: *http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20187–1D.pdf.*

FOR FURTHER INFORMATION CONTACT: Ms. Tish Thompkins-Imafidon, Flight Standards Service, AFS–50, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 385–8097.

Issued in Washington, DC on September 29, 2010.

Raymond Towels,

Deputy Director, Flight Standards Service.

[FR Doc. 2010–26322 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Public Notice for Waiver of Aeronautical Land-Use Assurance; Oakland/Southwest Airport; New Hudson, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the Oakland/Southwest Airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of vacant, unimproved land owned by the County of Oakland (County).

The County has requested from FAA a "Release from Federal agreement obligated land covenants" to sell one (1) parcel and a portion of another parcel of property acquired by the County without Federal funding.

The above mentioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the County to dispose of the vacant property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

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

ADDRESSES: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229–2952/FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at the Michigan Department of Transportation, Airports Division, 2700 Port Lansing Road, Lansing, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Lyon Township, Oakland County, Michigan, and described as follows:

Description of Parcel 12 being released (1.88 acres):

Part of the Southeast ¼ of Section 4, Town 1 North, Range 7 East, Lyon Township, Oakland County, Michigan, described as commencing at the Southeast corner of said Section 4; thence along the South line of said Section, due West 1297.34 feet; thence due North 903.09 feet to the point of beginning; thence due West 150.00 feet; thence due North 502.47 feet to the centerline of Pontiac Trail; thence along the said centerline, North 59 degrees 44 minutes 06 seconds East 173.67 feet, thence due South 590.00 feet to the point of beginning.

Description of that portion of Parcel 11 being released (0.156 acres):

A part of the Southeast ¼ of Section 4, Town 1 North, Range 7 East and part of the Northeast ¼ of Section 9, Lyon Township, Oakland County, Michigan, being more particularly described as: commencing at the Southeast corner of said Section 4; thence South 86 degrees 15 minutes 46 seconds West, 1297.34 feet along the South line of said Section 4; thence North 3 degrees 25 minutes 08 seconds West, 781.08 feet to the point of beginning; thence 155.83 feet along a non-tangent curve to the right, said curve having a radius of 293.00 feet, a Delta of 30 degrees 28 minutes 18 seconds and a Chord bearing North 41 degrees 01 minutes 10 seconds West, 154.00 feet; thence North 86 degrees 34 minutes 52 seconds East, 93.96 feet, thence South 3 degrees 25 minutes 08 seconds East, 122.01 feet to the point of beginning and containing 6,793 square feet or 0.156 acres.

Issued in Romulus, Michigan, on August 11, 2010.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2010–26432 Filed 10–21–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

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

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Advanced Capital Adequacy Framework Regulatory Reporting Requirements (FFIEC 101), which is a currently approved collection of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions to the FFIEC 101 report prior to giving final approval. The agencies will then submit the proposal to OMB for review and approval.

DATES: Comments must be submitted on or before December 21, 2010.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0239, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to "FFIEC 101," by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the reporting form number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "FFIEC 101, 3064–0159," by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov.* Include "FFIEC 101, 3064–0159" in the subject line of the message.
- *Mail:* Leneta G. Gregorie, (202) 898–3719, Counsel, Attn: Comments, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by "1550–0120 (FFIEC 101)," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include "1550–0120 (FFIEC 101)" in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "1550–0120 (FFIEC 101)."
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550–0120 (FFIEC 101)."

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the FFIEC 101 can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Leneta G. Gregorie, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulation and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the FFIEC 101, which is a currently approved collection of information for each agency.

Report Title: Advanced Capital Adequacy Framework Regulatory Reporting Requirements.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0239.

Estimated Number of Respondents: 52 national banks.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 130,000 hours.

Board

OMB Number: 7100–0319.

Estimated Number of Respondents: 6 State member banks and 21 bank holding companies.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 52,500 hours.

FDIC

OMB Number: 3064–0159.

Estimated Number of Respondents: 9 State nonmember banks.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 22,500 hours.

OTS

OMB Number: 1550–0120.

Estimated Number of Respondents: 3 savings associations.

Estimated Time per Response: 625 hours.

Estimated Total Annual Burden: 7,500 hours.

General Description of Reports

This information collection is mandatory for banks [1] using the Advanced Capital Adequacy Framework: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 and 12 U.S.C. 1844(c) (for State member banks and BHCs respectively), 12 U.S.C. 1817 (for insured State nonmember commercial and savings banks), and 12 U.S.C. 1464 (for savings associations). This information collection will be given confidential treatment (5 U.S.C. 552(b)(4)) except for selected data items (Schedules A and B, and data items 1 and 2 of the operational risk Schedule S) that will be released for reporting periods after an institution has successfully completed its parallel run period and is qualified to use the advanced approaches for regulatory capital purposes. The agencies will not publicly release information submitted during an entity's parallel run period.

Abstract

Each bank that qualifies for and applies the advanced internal ratings-based approach to calculate regulatory credit risk capital and the advanced measurement approaches to calculate regulatory operational risk capital, as described in the final rule implementing the Advanced Capital Adequacy Framework (72 FR 69288, December 7, 2007, referred to hereafter as the final rule), is required to file quarterly regulatory data. The agencies use these data to assess and monitor the levels and components of each reporting entity's risk-based capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy Framework; to evaluate the impact and competitive implications of the Advanced Capital Adequacy Framework on individual reporting entities and on an industry-wide basis; as one input to develop an interagency study at the end of the second transitional floor period (as described more fully in the final rule); and to supplement on-site examination processes. The reporting schedules also assist banks in understanding expectations around the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework. Submitted data that are released publicly following a reporting entity's parallel run period will also provide other interested parties with information about banks' risk-based capital.

Current Actions

The agencies propose to revise certain portions of the FFIEC 101 report beginning with the March 31, 2011, report date. These proposed changes are described below.

Reporting of information about the numerator of a bank holding company's risk-based capital ratios. For bank holding companies subject to these reporting requirements, the agencies propose to recaption line item 6.b of Schedule A, Part 1 of the FFIEC 101 report and to add line item 6.c. Line item 6.b is currently intended to capture two components of capital that are reported separately on Schedule HC–R of the FR Y–9C: [2] the amount of qualifying restricted core capital elements (other than cumulative perpetual preferred stock) held by bank holding companies (as reported in item 6.b of Schedule HC–R) and qualifying mandatory convertible preferred securities held by internationally active bank holding companies (as reported in item 6.c of Schedule HC–R). The agencies propose to align the reporting of these capital elements to that of Schedule HC–R of the FR Y–9C by separately including both capital elements in the FFIEC 101. These two capital elements would replace the

[1] For simplicity, and unless otherwise indicated, this notice uses the term "bank" to include banks, savings associations, and bank holding companies (BHCs). The terms "bank holding company" and "BHC" refer only to bank holding companies regulated by the Board and do not include savings and loan holding companies regulated by the OTS. For a detailed description of the institutions covered by this notice, refer to Part I, Section 1, of the final rule entitled Risk-Based Capital Standards: Advanced Capital Adequacy Framework (72 FR 69397, December 7, 2007).

[2] Consolidated Financial Statements for Bank Holding Companies, OMB Number: 7100–0128.

current item 6.b and would appear, as they do on Schedule HC–R in the FR Y–9C, as items 6.b and 6.c of Schedule A, Part 1, respectively. Reporting instructions for the FFIEC 101 would be revised accordingly. The change in reporting would apply only to bank holding companies.

Reporting of information about the numerator of a savings association's risk-based capital ratios. For the purposes of simplicity and comparability of reporting financial information among banks and savings associations under the Advanced Capital Adequacy Framework, the Agencies propose to delete Part 2 of Schedule A for savings associations. Instead, all banks, bank holding companies, and savings associations reporting under the Advanced Capital Adequacy Framework would report on the same Schedule A form (*see http://www.ffiec.gov/forms101.htm*). Reporting instructions for the FFIEC 101 would be revised accordingly.

Reporting of information on equity exposures. Banks subject to these reporting requirements currently provide information about equity exposure amounts and the risk-weighted asset amount of these exposures in Schedule R of the FFIEC 101. This schedule currently contains 22 line items (exposure categories, subtotals, and totals) and two columns (exposure and risk-weighted asset amounts) in which data are reported. A number of the line items listed on the schedule only apply to certain approaches contained within the final rule for calculating risk-weighted asset amounts for equity exposures. The agencies propose to reformat Schedule R to clarify what line items need to be reported based on which of the three approaches the bank uses to calculate risk-weighted asset amounts for its equity exposures: the simple risk weight approach (SRWA), the full internal models approach (full IMA), or the IMA applied to only publicly traded equity exposures (publicly traded or partial IMA).

The reformatted version of Schedule R does not alter any of the existing line items in the current schedule. More specifically, neither the exposure categories nor the number of equity exposure items completed by banks using a given approach would change as a result of this proposal. Rather, the proposal is to expand the number of columns shown on the schedule from two to six to allow for reporting of a distinct set of exposure and risk-weighted asset information for banks using the SRWA, a distinct set of exposure and risk-weighted asset information for banks using the full IMA, and a distinct set of exposure and risk-weighted asset information for banks using the partial IMA. Each set of exposure and risk-weighted asset columns would appear with the heading of the applicable final rule approach used by the bank and only those exposure categories (including subtotals and totals) applicable to a given approach would appear within each columnar section of the reformatted schedule (*see http://www.ffiec.gov/forms101.htm*). Reporting instructions for the FFIEC 101 would be revised accordingly.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collection of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collection as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: October 7, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, October 15, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 15th day of October, 2010.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: October 18, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–26585 Filed 10–21–10; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Security Savings Bank, FSB; Olathe, KS; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision (OTS) has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Security Savings Bank, FSB, Olathe, Kansas (OTS No. 06084), on October 15, 2010.

Dated: October 18, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–26664 Filed 10–21–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a teleconference meeting of the Spinal Cord Injury & Regenerative Medicine Subcommittee of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held November 4, 2010, in Room 933 at the Greenhoot Cohen Building, 1722 I Street, NW., Washington, DC, at 2 p.m. The meeting will be closed to the public for the discussion, examination, reference to, and oral review of the research proposals and critiques.

The purpose of the Board is to review rehabilitation research and development applications and advise the Director, Rehabilitation Research and Development Service, and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects.

During the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

For further information, please contact Tiffany Asqueri, Designated Federal Officer, Rehabilitation Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 461–1740 or *tiffany.asqueri@va.gov.*

Dated: October 18, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–26556 Filed 10–21–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on November 1–2, 2010, in the Boston University School of Public Health, Room 107, 670 Albany Street, Boston, MA. The sessions will convene at 8 a.m. each day and adjourn at 5:15 p.m. on November 1 and at 1 p.m. on November 2. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. The session on November 1 will be devoted to presentations of ongoing research related to inflammation, mitochondrial damage, and pain. There will also be updates of the VA Gulf War research program and the VA-funded Gulf War Biorepository. The session on November 2 will include presentations on toxicogenomics, cancer, and acupuncture as a potential treatment for ill Gulf War veterans. Additionally, there will be discussion of Committee business and activities.

Public comments will be received at 4:45 p.m. on November 1 and at 12:30 p.m. on November 2. A sign-up sheet for five-minute comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White, Chair, Department of Environmental Health, Boston University School of Public Health, 715 Albany Street, T2E, Boston, MA 02118, or email at *rwhite@bu.edu.*

Any member of the public seeking additional information should contact Dr. White, Scientific Director, at (617) 278–4517 or Dr. William Goldberg, Designated Federal Officer, at (202) 461–1667.

Dated: October 18, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–26724 Filed 10–21–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment to and republication of System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) proposes to amend the three existing systems of records known as "Veterans and Armed Forces Personnel Programs of Government Life Insurance—VA" (36VA00) as last updated and set forth in the **Federal Register** at 59 FR 38035 (July 26, 1994); "Veterans, Beneficiaries, and Attorneys United States Government Insurance Award Records—VA" (46VA00) as last updated and set forth in the **Federal Register** at 50 FR 50033 (December 6, 1985); and "Veterans Mortgage Life Insurance—VA" (53VA00) as last updated and set forth in the **Federal Register** at 59 FR 10455 (March 4, 1994) into one system of records. When this notice is approved and published in the **Federal Register**, the three systems of records referenced above will be deleted. This amendment will consolidate the three current systems of records 36VA00, 46VA00, and 53VA00 into one system under the designation of "Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA" (36VA29). This amendment includes updates reflecting current terminology, records usage, policies, managing office location, and storage and retrieval technology. We proposed to combine these changes as an amended and consolidated system of records entitled "Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA" (36VA29). VA is republishing this system of records in its entirety.

DATES: Comments on routine uses must be received no later than 30 days after date of publication in the **Federal Register**, on or before November 22, 2010. If no public comment is received during the period allowed for comments, the routine use will become effective November 22, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney-Advisor/Privacy Officer, VA Insurance Program Management Staff, Department of Veterans Affairs Regional Office and

Insurance Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, Ext. 2905.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The VA Insurance Program has reviewed its records notices and determined that its three existing systems of records know as "Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA" (36VA00); "Veterans, Beneficiaries, and Attorneys United States Government Insurance—VA" (46VA00); and "Veterans Mortgage Life Insurance—VA" (53VA00) should be consolidated into one system of records entitled "Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA" under a single number of 36VA29. When this notice is approved and published in the **Federal Register**, the three systems of records referenced above will be deleted and replaced by 36VA29.

This amendment is designed to reflect the VA Insurance Program's role and mission as the primary source of U.S. government life insurance for veterans and members of the uniformed services. The amendment also serves to reflect the evolving technology and current practices of the VA Insurance Program.

The System Location is amended to reflect the various locations of both active and inactive insurance records, including back-up records. Addresses of the various records storage centers is provided in the attached Appendix I of the System of Records Notice (SORN).

The Categories of Individuals covered by the system is modified to provide the individuals covered by the system and the specific chapters under title 38 United States Code (U.S.C.) for each program of insurance under which these individuals are covered.

The Categories of Records in the System was amended to reflect the Insurance Program's current technology, including the following: (a) Use of the Disability Outreach Tracking System (DOTS) which stores the veteran's or uniformed services member's name, address, phone number, and disability status as part of the Insurance Program's benefits outreach service; (b) the VA Insurance Web site self-service portal which tracks activities related to policy changes, which may include the name of the insured, file number, policy number, address, phone number, e-mail address, loan status, including loan amount requested, denied, or pending, date of request for information, loan history, and dividend option changes, and Web site pages accessed; (c) the VA Insurance Web site "Autoform" program provides access for veterans to complete an online application for Service-Disabled Veterans Insurance (S–DVI), which may include the veteran's name, address, Social Security number, date of birth, phone number, medical history, e-mail address, and beneficiary information, such as the beneficiary's name, address, and Social Security number; (d) the "Freedom Enterprise," which records incoming phone calls received by insurance personnel of the Veterans Insurance Phone Section (VIPS) from veterans, service members, beneficiaries, personal representatives, Members of Congress and their staff members, other interested parties, and stakeholders. (The recordings are maintained for quality assurance and training purposes only.)

The Authority for Maintenance of the System has been amended to reflect current citations for DOTS, the VA programs of government life insurance, and the Privacy Act.

The system of records has been amended by revising the "Purpose(s)" section. The Purpose(s) section explains the mission and purpose of the VA Insurance Program. (Legal authorities for the routine uses have been updated and are listed with the routine use in the System of Records Notice (SORN) where appropriate for reference.)

Several changes have been made to the Routine Uses of Records consisting of the following:

Routine use 1 has been continued in this single SORN from the previous three SORNs (36VA00; 46VA00; and 53VA00) to permit disclosure of information from the record of an individual in response to inquiry from a Congressional office made on behalf of the individual.

Routine use 2 has been added to permit disclosure of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) relative to inspection conducted under title 44 U.S.C. NARA and GSA are responsible for the proper disposition and archiving of Federal records that are no longer active but may be appropriate for preservation. VA must be permitted to share information with NARA in order for NARA and GSA to perform these statutorily created functions.

Routine use 3 permits records disclosure to the U.S. Department of Justice (DoJ). When VA is involved in litigation or an adjudicative or administrative agency process and VA policies or operations may be affected by the outcome of the litigation or process, VA must be able to disclose pertinent information to the court, adjudicative or administrative bodies or parties involved. This routine use does not constitute authority to disclose records in response to a grand jury or other subpoena under the Privacy Act. This routine use is an expansion of routine use number 13 from the existing 36VA00.

Routine use number 4 permits disclosure of information to individuals, agencies, organizations, or entities from whom VA requires the services of a contractor or subcontractor to perform under the contractual agreement with VA as is deemed practicable under the laws administered by VA.

Routine use number 5 represents a consolidation of the existing routine uses number 6, 7, and 8 from the existing 36VA00 and number 2 of the existing 53VA00. This use permits VA, based on its own initiative, relative to a suspected or reasonably imminent violation of a law, to disclose information to the Federal, State, local, Tribal, or foreign agency charged with enforcing or implementing such law, rule or order. This use permits disclosure of the name and address of the veteran or member of the uniformed services, upon written request for such, when relevant to the suspected or reasonably imminent violation of laws involving public health or safety, to the agency with the responsibility of maintaining compliance with such laws.

Routine use number 6 has been included to permit disclosure to other Federal agencies to assist the agencies in preventing and detecting fraud or abuse by persons in their operations or programs.

Routine use number 7 has been added to permit disclosure of information to agencies, entities, or persons responsible for preventing, minimizing, responding to, or establishing remedies when VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised or there is the risk of harm to an individual, including harm affecting their reputation, economic status, security, and confidentiality, or harm affecting another agency or entity which relies on the information in this system of records or other systems or programs.

Routine use number 8 was formerly recorded as routine use number 2 under both the existing 36VA00 and the existing 46VA00 and has been incorporated to permit disclosure of information to a Federal agency to the extent necessary for the agency to render decisions involving hiring, retention or transfer of an employee; issuance of a security clearance, letting of a contract, or the issuance or continuance of a license, grant or other benefit given by the agency. Written consent by the veteran must be provided for disclosures to the U.S. Postal Service based on an agreement with the U.S. Postal Service.

Routine use number 9 was formerly recorded as routine use number 3 under the existing 36VA00 and the existing 46VA00 and has been incorporated to permit disclosure of information to a State or local agency to the extent necessary for the agency to render decisions involving hiring, retention or transfer of an employee; issuance of a security clearance, letting of a contract, or the issuance or continuance of a license, grant or other benefit given by the agency. The name and address of the veteran or member of the uniformed services will not be disclosed unless the name and address is provided first by the requesting State or local agency.

Routine use number 10 was formerly recorded as routine use number 4 under the existing 36VA00 and has been incorporated to permit disclosure to a Federal, State, or local agency maintaining civil or criminal violation records or other pertinent information regarding an individual's background in order for VA to render a decision regarding hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

Routine use number 11 was formerly recorded as routine use number 5 under the existing 36VA00 and number 4 under the existing 46VA00 and has been incorporated to permit VA to disclose to a Federal agency, information other than the name and address of the veteran or member of the uniformed services (unless required by the receiving Federal agency) in order for VA to obtain information relevant to issuance of title 38 U.S.C. benefits.

Routine use number 12 was formerly recorded as routine use number 9 under the existing 36VA00 and has been incorporated to permit disclosure of information to nonprofit organizations where such information is related to programs and utilization of benefits under title 38 U.S.C., and includes computerized lists of names and addresses of veterans or members of the uniformed services, but not beneficiary designation related information.

Routine use number 13 was formerly recorded as routine use number 10 under the existing 36VA00 and routine use number 6 under the existing 53VA00 and has been incorporated to permit disclosure of insurance contract information upon the veteran's or uniformed services member's request, not including medical or beneficiary related information, to the veteran's or uniformed services member's legal representative in order to assist a veteran's or uniformed services member's legal representative in prosecution of a claim under the laws administered by VA.

Routine use number 14 was formerly recorded as routine use number 11 under the existing 36VA00 and has been incorporated to permit disclosure of information to the Treasury Department in order for the Treasury Department to process payment related activities. Additional language has been added consisting of "insurance account information of an insured veteran or member of the uniformed services" and "perform check tracer activities for the veteran or member of the uniformed services, beneficiary(ies), legal representative or designated payee(s)" to reflect activities and terms commonly used in the payment process.

Routine use number 15 was formerly recorded as routine use number 12 under the existing 36VA00 and has been incorporated to permit disclosure of information to the Internal Revenue Service (IRS) when it is required for the IRS to collect tax liens.

Routine use number 16 was formerly recorded as routine use number 14 under the existing 36VA00 and has been incorporated to permit disclosure of identifying information for members of the uniformed services and veterans, including personal information about their military service, medical status, beneficiary(ies) and dependent(s), to the Office of Servicemembers' Group Life Insurance (OSGLI) in order for OSGLI to provide government life insurance coverage under the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs. This routine use has been edited to reflect that disclosure of information about members of the uniformed services and veterans is currently used by OSGLI in the administration of the related programs of insurance based on OSGLI's contractual relationship with VA.

Routine use number 17 was formerly recorded as routine use number 15 under the existing 36VA00 and has been incorporated to permit disclosure of information to the Department of Defense and the uniformed services in order to establish and maintain allotments from active and retired service pay for VA insurance premiums and loan repayments.

Routine use number 18 was formerly recorded as routine use number 16 under the existing 36VA00 and has been incorporated to permit disclosure of policy and loan values and the name and address of the veteran or member of the uniformed services to Federal, State, and local agencies in order for the agency to render a decision regarding the veteran's or uniformed services member's entitlement to Medicaid, Medicare, nursing home admittance, and welfare benefits. Additional language has been added stating "or other benefits provided by the requesting agency" in order to be more inclusive and encompassing with regards to benefits beyond Medicaid, Medicare, nursing home admittance, and welfare provided by the agency to which the veteran or member of the uniformed services may be entitled.

Routine use number 19 was formerly recorded as routine use number 17 under the existing 36VA00 and has been incorporated to permit disclosure of the name, address, and military service information of the veteran or member of the uniformed services to the Armed Forces Institute of Pathology (AFIP) for official research purposes.

Routine use number 20 was formerly recorded as routine use number 18 under the existing 36VA00 and has been incorporated to permit disclosure of the name(s) and address(es) of a veteran or member of the uniformed services to another Federal agency or contractor of that agency for the purposes of government research based on the statutory purpose of such agency.

Routine use number 21 was formerly recorded as routine use number 19 under the existing 36VA00 and number 6 under the existing 46VA00 and has been incorporated to permit disclosure of any information in the system, including information related to financial obligations, to a debtor's employing agency or commanding officer for the purpose of debt collection and debtor-employee counseling.

Routine use number 22 was formerly recorded as routine use number 20 under the existing 36VA00 and number 7 under the existing 46VA00 and has been incorporated to permit disclosure of information regarding the veteran's or uniformed services member's indebtedness to the United States based on participation in VA benefit programs to another Federal agency, a State agency, or a State probate court in order to obtain current address, locator, and credit report assistance in the collection of unpaid financial obligations owed to the United States.

Routine use number 23 was formerly recorded as routine use number 21 under the existing 36VA00 and routine use number 8 under the existing 46VA00 and has been incorporated to permit disclosure of information to a third party, but not a consumer protection agency, regarding the veteran's or uniformed services member's indebtedness to the United States based on participation in a VA benefits program, in order to help VA collect debts due and initiate legal action due to fraud in obtaining title 38 benefits.

Routine use number 24 was formerly recorded as routine use number 22 under the existing 36VA00 and has been incorporated to permit disclosure of the name and address of the veteran or member of the uniformed services, and other information which is reasonably necessary to identify the veteran or member of the uniformed services, including information concerning the veteran's or uniformed services member's indebtedness to the United States based on participation in VA benefit programs, to consumer reporting agencies in order to assist in collection of the indebtedness.

Routine use number 25 was formerly recorded as routine use number 23 under the existing 36VA00 and has been incorporated to permit disclosure of information to the legal representative of incompetent veterans or members of the uniformed services in order to advise the legal representative relative to actions required to properly perform his/her duty. Additional language has been added to include "court-appointed guardians/conservators, Powers of Attorney, or military trustees" and the term "VA Federal fiduciaries" has been changed to "VA fiduciaries" to reflect the types of representatives who may receive information.

Routine use number 26 is being inserted to replace routine use numbers 24 and 25 under the existing 36VA00 and has been incorporated to permit disclosure of information involving the presentation of evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceeding or settlement negotiations. In order to avoid the controversies presented by cases such as *Doe* v. *DiGenova,* 779 F.2d 74 (DC Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457 (DC Cir. 1988) regarding disclosure of information under the Privacy Act in response to subpoenas, this routine use was added to permit disclosure in response to grand jury proceedings but omitting the "subpoena" related language reference in 36VA00.

Routine use number 27 was formerly recorded as routine use number 26 under the existing 36VA00 and has been incorporated to permit disclosure of information to Federal, State, country, and municipal agencies for the purpose of conducting computer matches to validate a veteran's or uniformed services member's entitlement to insurance benefits under title 38 U.S.C. The name and address of the veteran or member of the uniformed services may be disclosed if required by the Federal agency in order to respond to VA.

The Policies and Practices for Storing, Accessing, Retaining, and Disposing of Records in the System section is amended to more accurately reflect terminology and changes in technology used by the VA Insurance Program. The Insurance Program has evolved from a paper-based environment to a largely paperless one. Records and information are primarily stored electronically in two storage and retrieval systems, called the Veterans Insurance Claims Tracking and Response System (VICTARS), and the Insurance Terminal System (ITS), which are maintained as part of the VA Insurance Program's local area network (LAN).

VICTARS utilizes imaging and electronic technology to store paper documents and store information from the Disability Outreach Tracking Services (DOTS), and Web site self-service activities, including "Autoform" S–DVI applications.

The Insurance Terminal System (ITS) provides direct access to insurance records relative to claims processing via computer monitors. This amendment explains that both VICTARS and ITS store and retrieve all information in the insurance records system through the LAN maintained through the VA Information Technology Center (VA ITC) at the Philadelphia VA Regional Office and Insurance Center.

The amendment also reflects changes involving the phone system used by the VA Insurance Program to include a computerized phone system called "Freedom Enterprise" which creates recordings of incoming phone calls related to insurance policies for quality assurance and training purposes only. This system stores the call as part of the LAN maintained through the VA ITC.

The amendment notes that back-up VA insurance computer records are stored by Iron Mountain Off-Site Data in a secured area. (The complete address is provided in Appendix 1 at the end of this document.)

Inactive records are also no longer stored on magnetic tape, and reference to such has been removed in this amended system of records.

The Retrievability section is amended to reflect how records are retrieved in these new computerized storage media using the VA insurance file number, VA file number, policyholder's name, social security number, date of birth, personal identification numbers (PINs), and passwords.

The Safeguards section in the system of records is amended to include changes involving the fact that automated records which are not in use by the ITC are now stored in locked secured areas at Iron Mountain Off-Site Data Center. (The address of the facility is provided in the SORN in Appendix I.)

The amendment reflects that access to the VA ITC and the Collections Unit (the payment processing unit) is restricted to authorized personnel with approved electronically coded access cards. All other persons gaining access to computer rooms and the Collections Unit are escorted by an individual with authorized access.

This amendment reflects that Physical Security and System Security at the Philadelphia VA Regional Office and Insurance Center for computerized storage systems, including VICTARS, ITS, Freedom Enterprise, and the VA ITC is protected by password access, magnetic access card readers, and audible alarms in designated areas. Electronic keyboard locks are activated upon security errors. Video surveillance is also provided in secured processing and computer protected areas, such as Claims, Collections, and VA ITC. Approved encryption technology is included in the amendment to reflect new system security procedures.

Changes involving the main computer site area are included to note the end of the Benefits Delivery Network terminology and the use of the new centralized computer center called the VA Information Technology Center (VA ITC). VA ITC's practices of identifying computerized tapes and disks containing data is enforced using automated labeling techniques. Access to computer programs is now controlled at the Operations level only, and no longer involves Auditing or Programming personnel.

The Retention and Disposal sections are amended to make distinctions between remaining hardcopy records and imaged/computerized records. Hardcopy records are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States. VICTARS, the primary records storage and retrieval system for the Insurance Program, maintains imaged insurance records indefinitely, which has resulted in removal of the need for reference to periods of storage for inactive records, specifically the 36-month and 50-year Federal Archive and Records reference in the previous SORN 36VA00 and the reference to Veterans' Mortgage Life Insurance (VMLI) closed and inactive files noted in SORN 53VA00.

Additional changes in this section include the following: Hardcopy records imaged into VICTARS are stored for 31 days prior to destruction. Beneficiary designation forms are imaged and the hardcopy originals are stored indefinitely at the NARA Mid Atlantic Region Center. (The address of the facility is provided in Appendix I of the SORN.) Computerized records accessible through ITS are maintained indefinitely though the LAN. Back-up VA ITC archive records are stored on tape for 1 year prior to being erased or written over. Records in the "Freedom Enterprise" system which records incoming phone calls regarding insurance policies are maintained for 1 year and are purged 13 months after the call.

The System Manager(s) and Address sections have been amended to provide the complete mailing address of: Director (00), VA Regional Office and Insurance Center, 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101.

The Notification Procedure section is amended to reflect a direct number for the Director's staff relative to inquiries about the records. The number provided is (215) 381–3029. Reference to the St. Paul, Minnesota, office for records requests has been removed because the St. Paul Insurance Center is no longer in operation and all records from that office have been consolidated into the records maintained by the Philadelphia Insurance office.

Language from 36VA00, 46VA00, and 53VA00 has been combined and incorporated relative to the information needed to complete the records inquiry request.

Also the reference to submission of VMLI lending and mortgage information noted in SORN 53VA00 has been omitted because the VMLI records are identified using the same indicators used to identify other Insurance program records.

Record Access Procedures now provides the complete mailing address of the Philadelphia VA Regional Office and Insurance Center to individuals desiring access to, and contesting of, VA records. The section also requested written notice for records access and provides language noting that "and related procedures" can be part of the inquiry.

The Record Source Categories has been amended to reflect inclusion of Westlaw, InfoUSA, and the Inquiry Routing & Information System (IRIS) as sources of information used in this record system. Notation that IRIS is maintained by the Office of Information Technology (005) and is governed under the system of records entitled "Information Routing & Information System (IRIS)—VA" (151VA005N) has been added.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amended routine use statement to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All relevant material received within November 22, 2010 will be considered. All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1068, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

If no public comment is received during the 30-day review period allowed for public comment, or otherwise published in the **Federal Register** by VA, the new routine use is effective November 22, 2010.

Approved: September 1, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

36VA29

SYSTEM NAME:

"Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA"

SYSTEM LOCATION:

VA Insurance records are maintained as follows:

Active Insurance records are located at the VA Regional Office and Insurance Center (VAROIC) in Philadelphia, Pennsylvania. (The complete address is available in Appendix 1 at the end of this document.)

Inactive Insurance records are located at the VA Regional Office and Insurance Center (VAROIC) in Philadelphia, Pennsylvania. (The complete address is available in Appendix 1 at the end of this document.) In addition, inactive records are stored at various servicing Federal archives and records centers in Northeast Philadelphia, Pennsylvania; Miamisburg, Ohio; Lee's Summit, Missouri; Lenexa, Kansas; Chicago, Illinois; and Pittsfield, Massachusetts. (The complete addresses are available in Appendix 1 at the end of this document.)

Some pre-1968 records pertaining to beneficiaries of deceased veterans are located in local VA regional offices in VA claim folders.

Insurance file numbers, policies numbers, and folder locations are available to all VA regional offices through VETSNET.

Back-up computerized insurance records and automated data maintained by the VA Information Technology Center (VA ITC), the primary computer processing center, is stored by Iron Mountain Off-Site Data in Itasca, Illinois. (The complete address is available in Appendix 1 at the end of this document.)

Records for the supervised programs of government insurance are maintained by the Office of Servicemembers' Group Life Insurance (OSGLI) in Roseland, New Jersey. (The complete address is available in Appendix 1 at the end of this document.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system:

1. Veterans (not including dependents) and members of the uniformed services (including dependents) who have applied for and/or have been issued government life insurance.

2. Beneficiaries of government life insurance entitled to or in receipt of insurance proceeds.

3. Attorneys drawing fees for aiding in settlement of VA insurance claims.

The individuals noted above are covered by this system based on applications, claims, and notices of eligibility for the following government life insurance programs provided in 38 U.S.C. Chapters 19 and 21:

(1) U.S. Government Life Insurance (USGLI) under Section 1942.

(2) National Service Life Insurance (NSLI) under Section 1904.

(3) Veterans' Special Life Insurance (VSLI) under Section 1923.

(4) Veterans' Reopened Insurance (VRI) under Section 1925.

(5) Service-Disabled Veterans Insurance (S–DVI) under Section 1922 and 1922A.

(6) Veterans' Mortgage Life Insurance (VMLI) under Section 2106.

(7) Servicemembers' Group Life Insurance (SGLI), including Family Servicemembers' Group Life Insurance (FSGLI), Veterans' Group Life Insurance (VGLI), and Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) under Sections 1967 through 1980A.

CATEGORIES OF RECORDS IN THE SYSTEM:

Life insurance records (or information contained in records) may consist of:

1. Applications for insurance, including the name and address of the veteran or member of the uniformed services, e-mail address, phone number, correspondence to and from the veteran or member of the uniformed services or their legal representatives, date of birth, social security number, military service number, dates of service, military ranking, character of discharge, VA file number, plan or type of insurance, disability rating, medical information regarding disability and health history, method of payment, amount of insurance coverage requested, and bank routing and account numbers. Applications for Veterans' Mortgage Life Insurance (VMLI), including supporting mortgage documents, contain the address of the mortgaged property, name and address of the mortgagor, the mortgage account number, the rate of interest, the original amount of the mortgage, and the current amount of the mortgage, the monthly payment amount, the mortgage payment period, and VA Specially Adapted Grant Cards (which contain the veteran's or uniformed services member's name, address, dates of military service, branch of service, method of separation, whether the veteran or member of the uniformed services has VMLI, the name and address of the lender, the legal description and property address, improvements to such property, date applied for disability compensation, date of initial application submission, grant information, amount of the grant approved or whether the grant was denied or canceled).

2. Beneficiary and option designation information, including the names and addresses of principal and contingent beneficiaries, beneficiary social security number, share amount to each beneficiary, the method of payment, and the designated estate(s) and trust(s).

3. Insurance contract information, including: (a) Authorization of allotment payment; (b) authorization for deduction from VA benefit payments; (c) authorization for deduction from military retired pay; (d) authorization for deduction from employee payroll; (e) paid dividend information; (f) claims for disability or death payments; (g) cash value, policy loan, and lien information; (h) a listing of lapsed actions and unpaid insurance proceeds; (i) payment vouchers; (j) reinstatement information; (k) premium records status, and retired status of the policy; (l) court-martial orders; (m) copies of personal papers of the insured, including birth certificate, marriage license, divorce decree, citizen or naturalization papers, death certificate, adoption decree, and family support documents; (n) correspondence to and from the veteran, member of the uniformed services, legal representative and payee; (o) employment information; (p) returned check and check tracer information; (q) court documents; and (r) insurance death claims settlement information, including indebtedness, interest, and other credits.

4. Records of checks withheld from delivery to certain foreign countries.

5. Index of payees, including CO index cards and premium record cards.

6. Disability Outreach Tracking System (DOTS) records stored in the Veterans Insurance Claims Tracking and Response System (VICTARS) including the veteran's or uniformed services member's name, address, phone number, and disability status.

7. Policy information and access history from the VA Insurance Web site self-service-portal stored in VICTARS, which includes the name of the insured, file number, policy number, address, phone number, e-mail address, loan status, including loan amount requested, denied, or pending, the date of request for information, loan history, policy changes, dividend option changes, and Web site pages accessed.

8. Information from the VA Insurance Web site's "Autoform" program which provides access to veterans for completion of an application for Service-Disabled Veterans Insurance (S–DVI), which includes the veteran's name, address, social security number, date of birth, phone number, medical history, e-mail address, and beneficiary information, such as the beneficiary's name, address, and social security number.

9. Records of incoming calls recorded in the "Freedom Enterprise" system. These are recordings of incoming phone calls received by insurance personnel of the Veterans Insurance Phone Section (VIPS) from veterans, members of the uniformed services, beneficiaries, personal representatives, members of Congress and their staff, other interested parties, and stakeholders. (The recordings are maintained for quality assurance and training purposes only.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.), chapter 5, section 501, and chapter 3, including sections 303 and 315.

Title 38, U.S.C., chapter 19; chapter 21, section 2106; and chapter 77, sections 7721–7725.

Title 5 U.S.C. 552(a) and 5514.

PURPOSE(S):

VA gathers or creates these records in order to enable it to administer and supervise statutory government life insurance programs for veterans, members of the uniformed services, and their spouses, surviving spouses, dependents, and beneficiaries who apply for government life insurance benefits administered or supervised by the VA Insurance Program. *See* the statutory provisions cited in "Authority for maintenance of the system."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of title 44 U.S.C.

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans, members of the uniformed services, and their dependents, that is relevant to a suspected or reasonably

imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans, members of the uniformed services, and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

8. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: The hiring, retention or transfer of an employee; the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

9. Any information in this system may be disclosed to a State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by that agency; provided, that if the information pertains to a veteran or member of the uniformed services, the name and/or address of the veteran or member of the uniformed services will not be disclosed unless the name and address is provided first by the requesting State or local agency.

10. Any information in this system may be disclosed to a Federal, State or local agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and personal or educational background at the request of the veteran or member of the uniformed services in order for VA to obtain information relevant to the hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

11. Any information in this system may be disclosed to a Federal agency, except for the name and address of a veteran or member of the uniformed services, in order for VA to obtain information relevant to the issuance of a benefit under title 38 U.S.C. The name and address of a veteran or member of the uniformed services may be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to VA inquiry.

12. Except for beneficiary and option designations, any information in this system including the name and address of a veteran or member of the uniformed services may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. (such disclosures include computerized lists of names and addresses).

13. Except for medical information and beneficiary and option designations, any information including insurance contract information (*e.g.,* name, address, status of the account, dividends paid, cash value, and policy loans) may be disclosed at the request of a veteran or member of the uniformed services to an attorney acting under a declaration of representation, a VA-approved claims agent, an insurance agency, a trust officer, or to employees or members of an accredited service organization, so that these individuals or organizations can aid veterans or members of the uniformed services in the preparation, presentation, prosecution of claims under the laws administered by VA. The name and address of a veteran or member of the uniformed services will not, however, be disclosed to these individuals under this routine use if the veteran or member of the uniformed services has not requested the assistance of an accredited service organization, claims agent, trust officer, or an attorney.

14. The name, address, insurance account information of an insured veteran or member of the uniformed services, their beneficiary(ies), legal representatives, or designated payee(s), and the amount of payment may be disclosed to the Treasury Department, upon its official request, in order for the Treasury Department to make payment of dividends, policy loans, cash surrenders, maturing endowments, insurance refunds, issue checks and perform check tracer activities for the veteran or member of the uniformed services, beneficiary(ies), legal representative or designated payee(s).

15. The name and address of an insured veteran or member of the uniformed services, date and amount of payments made to VA, including specific status of each policy (*e.g.,* premiums paid in, dividends paid out, cash and loan values) may be disclosed to the Internal Revenue Service (IRS), upon its official request, in order for the IRS to collect tax liens by withholding insurance payments to satisfy unpaid taxes. This purpose is consistent with title 26 of the United States Code, section 7602.

16. The name, address, social security number, date of discharge from the military, medical information concerning the grounds for total disability or the nature of an injury or illness, and dependency or beneficiary related information of a member of the uniformed services or veteran may be disclosed to the Office of Servicemembers' Group Life Insurance (OSGLI) at the request of a member of the uniformed services or veteran in order to aid OSGLI in the verification of such information for the purpose of issuance and maintenance of insurance policies provided to members of the uniformed services or veterans participating in the Servicemembers' Group Life Insurance (SGLI) program

and/or Veterans' Group Life Insurance (VGLI) program and to pay insurance benefits under these programs.

17. The name, address, and other identifying information such as a social security number or a military service number may be disclosed to the Department of Defense (Army, Air Force, Navy, Marine Corps); the Coast Guard of the Department of Homeland Security; the Commissioned Officers Corps of the U.S. Public Health Service; and the Commissioned Officers Corps of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce; this disclosure may be made upon their official request, for use in order for these departments to establish and maintain allotments from active and retired service pay for VA insurance premiums and loan repayments.

18. The face amount and cash and/or loan value of an insurance policy, verification of an existing insurance policy, and the name and address of an insured veteran or member of the uniformed services may be disclosed at the request of the veteran or member of the uniformed services to a Federal, State, or local agency, in order for these agencies to assist a veteran or member of the uniformed services applying for Medicaid, Medicare, nursing home admittance, welfare benefits, or other benefits provided by the requesting agency to the extent that the information is relevant and necessary to the agency's decision regarding benefits.

19. The name and address of a veteran or member of the uniformed services and military service information (*e.g.,* dates of service, branch of service) may be disclosed to the Armed Forces Institute of Pathology (AFIP), upon its official request, in order for the AFIP to conduct research for specified official purposes.

20. The name(s) and address(es) of a veteran or member of the uniformed services may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

21. Any information in this system, including the nature and amount of a financial obligation, may be disclosed to a debtor's employing agency or commanding officer, upon its official request, as a routine use in order to assist VA in the collection of unpaid financial obligations owed to VA so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 31 U.S.C. 3701–3702, and 3711–3718.

22. Any information in this system, including available identifying data regarding the debtor, such as the name of the debtor, last known address of the debtor, name of the debtor's spouse, social security account number of the debtor, VA insurance number, VA loan number, VA file number, place of birth and date of birth of the debtor, name and address of the debtor's employer or firm and dates of employment, may be disclosed to other Federal agencies, State probate courts, State drivers license bureaus, and State automobile title and license bureaus as a routine use in order to obtain current address, locator and credit report assistance in the collection of unpaid financial obligations owed the United States. This purpose is consistent with the Federal Claims Collection Act of 1966 (Pub. L. 89–508) and subsequent amendments, and 31 United States Codes 3701–3702 and 3711–3718.

23. Any information concerning the veteran's or uniformed services member's indebtedness to the United States by virtue of a person's participation in a benefits program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States. Purposes of these disclosures may be to (a) assist VA in collection of title 38 benefit overpayments, overdue indebtedness, and or costs of services provided individuals not entitled to such services, and (b) initiate legal actions for prosecuting individuals who willfully or fraudulently obtain title 38 benefits without entitlement. This disclosure is consistent with 31 U.S.C. 3701–3702, 3711–3718; and 38 U.S.C. 5701(b)(6).

24. The name and address of a veteran or member of the uniformed services, other information as is reasonably necessary to identify such veteran or member of the uniformed services, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's or uniformed services member's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 31 U.S.C. 3701–3702 and 3711–3718 and 38 U.S.C 5701(g)(4) have been met.

25. Any information in this system such as notice of renewal, reinstatement, premium due, lapse actions, miscellaneous insurance instructions, disposition of dividends, policy loans, and transfer of records may be disclosed to VA fiduciaries, court-appointed guardians/conservators, powers of attorney, or military trustees of incompetent veterans or members of the uniformed services in order to advise VA fiduciaries, court-appointed guardians/conservators, powers of attorney, or military trustees of current actions to be taken in connection with ownership of U.S. government life insurance policies and to enable them to properly perform their duties as fiduciaries or guardians, powers of attorney, or military trustees.

26. Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

27. Identifying information, except for the name and address of a veteran or member of the uniformed services, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran or member of the uniformed services who is receiving or has received government insurance benefits under title 38 of the United States Code. The name and address of a veteran or member of the uniformed services may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in two computerized systems called Veterans Insurance Claims Tracking and Response System (VICTARS), and the Insurance Terminal System (ITS). VICTARS utilizes imaging and electronic technology to store paper documents, including applications and correspondence, and it records all processing related activities involving insurance policies, disability outreach services, and Web site self-service and "Autoform" access.

The Insurance Terminal System (ITS) provides direct access to insurance records relative to claims processing via computer monitors. Both VICTARS and

ITS store and retrieve all information in the insurance records system through the local area network (LAN) maintained through the VA Information Technology Center (VA ITC) at the Philadelphia VA Regional Office and Insurance Center.

"Freedom Enterprise" creates recordings of incoming phone calls received by insurance personnel regarding insurance policy related issues and stores the call as part of the LAN maintained through the VA ITC.

Back-up VA insurance records are stored by Iron Mountain Off-Site Data in a secured area. (The complete address is provided in Appendix 1 at the end of this document.)

Inactive records are also stored on microfilm, microfiche, disks, Central Office (CO) index cards, premium record cards in hardcopy folders, on computer lists, and on punch cards, which are kept in locked files and secured areas.

RETRIEVABILITY:

All hardcopy and electronically stored insurance records are retrievable by the government insurance file number, VA file number, policyholder's name, social security number, or date of birth.

Information input through the VA Insurance Web site's self-service portal relative to loan applications is retrievable by the use of unique personal identification numbers (PINs), passwords, and an insurance file number. Approved encryption technology is used to protect personal information.

Incomplete Service-Disabled Veterans Insurance (S–DVI) applications are retrievable on the VA Insurance Web site through the "Autoform" program with the use of a personal password, social security number, and date of birth of the veteran. (The completed S–DVI application becomes part of the VICTARS storage system.) Approved encryption technology is used to protect personal information.

The "Interactive Voice Response (IVR)" system permits veterans to access audible information about their insurance records which is stored by the VA Insurance Program's LAN via touch-tone telephone technology utilizing the VA Insurance file number.

SAFEGUARDS:

1. PHYSICAL SECURITY:

a. All VA facilities are protected by the Federal Protective Service or other security personnel. All Insurance files and processing areas are restricted to authorized personnel on a need-to-know basis. Areas containing paper and computerized records are protected by a sprinkler system. Paper records pertaining to employees and public figures, or otherwise sensitive files, are stored in locked files. Microfilm records and computerized disk (CD) back-up files of Collections (the payment processing unit) activities are stored in locked, fireproof, humidity-controlled vaults at the VA Regional Office and Insurance Center. Automated records which are not in use by the VA ITC are stored in locked, secured areas at Iron Mountain Off-Site Data Center. (The complete address of the facility is available in Appendix 1 at the end of this document.)

b. Access to the VA ITC and Collections (the payment processing unit) is restricted to VA ITC and Collections employees, custodial personnel, and Federal Protective Service or other security personnel. Access to VA ITC and Collections is restricted to authorized personnel and is secured by electronic locking devices. All other persons gaining access to computer rooms and the Collections Unit are escorted by an individual with authorized access.

c. Access to insurance records at the Philadelphia VA Regional Office and Insurance Center through computerized storage systems, including VICTARS, ITS, "Freedom Enterprise", and the VA ITC is protected by password access, magnetic access card readers, and audible alarms. Electronic keyboard locks are activated upon security errors. Video surveillance is also provided in secured processing and computer protected areas, such as Claims, Collections, and VA ITC. An Information Security Officer is assigned responsibility for privacy-security measures, including review of violations logs and local control and distribution of passwords.

2. SYSTEM SECURITY:

a. In the VA ITC, identification of computerized tapes and disks containing data is enforced using automated labeling techniques. Access to computer programs is controlled at the Operations level.

b. The Veterans Insurance Claims Tracking and Response System (VICTARS), the Insurance Terminal System (ITS), and "Freedom Enterprise" utilizes the VA Insurance Program's LAN as the storage and retrieval conduit which provides automated recognition of authorized users and their respective access levels and restrictions through the use of passwords. Passwords are changed periodically and are restricted to authorized individuals on a need-to-know basis for system access or security purposes.

c. Back-up insurance records and VA ITC data records are stored in a secured site by Iron Mountain Off-Site Data. (The address of the facility is listed in Appendix 1 at the end of this document.)

d. The VA Insurance Web site self-service pages, including its "Autoform" application, which is used by veterans, their legal representatives, and payees is only accessible with the use of personal identifiers consisting of personal identification numbers (PINs), passwords, file numbers, loan numbers, social security number, and date of birth. The access portals utilize LAN based encryption technology and firewalls to protect personal data.

e. The "Interactive Voice Response" (IVR) system, which is protected as part of the VA Insurance Program's LAN, permits veterans to listen to information from their insurance records via touch-tone telephone technology which utilizes the VA Insurance file number to access the record.

f. Data exchange by e-mail within the agency or between other Federal agencies is done by means of dedicated communication lines utilizing approved encryption technology.

RETENTION AND DISPOSAL:

Hardcopy records are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

VICTARS, the primary records storage and retrieval system for the Insurance Program maintains imaged insurance records indefinitely through the VA Insurance Program's LAN. Hardcopy records imaged into VICTARS are stored for 31 days prior to destruction. Original copies of imaged beneficiary designation documents are stored indefinitely at the NARA Mid Atlantic Regional Center. (The complete address is provided in Appendix I at the end of this document.) Computerized records accessible through ITS are also maintained indefinitely through the VA Insurance Program's LAN.

Back-up VA ITC archive records are stored on tape for 1 year prior to being erased or written over.

Records in the "Freedom Enterprise" system which records incoming phone calls regarding insurance policies are maintained for 1 year and purged 13 months after the call.

SYSTEM MANAGER(S) AND ADDRESS:

Director (00), VA Regional Office and Insurance Center, 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101.

NOTIFICATION PROCEDURES:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or who wants to determine the contents of such record, or has a routine inquiry concerning the status of his or her insurance under this system may contact the VA Regional Office and Insurance Center in Philadelphia, Pennsylvania at (215) 381–3029. Requests concerning the specific content of a record must be made in writing or made in person to the VA Regional Office and Insurance Center in Philadelphia, Pennsylvania. The inquirer should provide the full name of the veteran or member of the uniformed services, their insurance file number or VA claim number or social security number, the date of birth of the veteran or member of the uniformed services, and reasonably identify the benefit or system of records involved. If the insurance file number or any of the other identifiers noted above are not available, the service number, and/or location of insurance records that will aid VA personnel in locating the official insurance records should be provided. (Address locations of records storage facilities for this system are listed in Appendix 1 at the end of this document.)

RECORD ACCESS PROCEDURE:

Individuals desiring access to, and contesting of, VA records and related procedures should write to the VA Regional Office and Insurance Center at 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, Pennsylvania 19101.

CONTESTING RECORD PROCEDURES:

(*See* Records access procedures above.)

RECORD SOURCE CATEGORIES:

The veteran, member of the uniformed services, or someone acting on their behalf; the uniformed services, other Federal agencies, including the Department of Defense (DoD); Social Security Administration (SSA); U.S. Treasury Department; Office of Servicemembers' Group Life Insurance (OSGLI); State and local agencies; Federal, State, and local courts; VA records; VA and private physicians; VA and private medical facilities; accredited veterans service organizations and other organizations aiding veterans and members of the uniformed services; VA-approved claims agents; VA fiduciaries; court-appointed guardians/conservators, powers of attorney, and military trustees; financial institutions; beneficiaries; commercial insurance companies; undertakers; lending institutions holding a veteran's or uniformed services member's mortgage; VA Loan Guaranty records; contractors remodeling or enlarging or adding construction to existing homes; relatives and other interested persons; Westlaw and InfoUSA; Inquiry Routing & Information System (IRIS) (maintained under System of Records "151VA005N" by the Office of Information & Technology); and the general public.

Appendix I: Address Locations of VA Insurance Records Facilities

1. VA Regional Office and Insurance Center, 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101.
2. Iron Mountain Offsite Data, 1397 Glenlake Avenue, Ilasca, IL 60143.
3. NARA Mid Atlantic Region (Northeast Philadelphia), 14700 Townsend Road, Philadelphia, PA 19154.
4. NARA Great Lakes Region (Dayton Kingsridge), 8801 Kingsridge Drive, Miamisburg, OH 45458.
5. NARA Central Plains Region (Lee's Summit), 200 Space Center Drive, Lee's Summit, MO 64064.
6. NARA Central Plains Region (Lenexa), 17501 West 98th Street, Suite 31–50, Lenexa, KS 66219.
7. NARA Great Lakes Region (Chicago), 7358 South Pulaski Road, Chicago, IL 60629.
8. NARA Northeast Region (Pittsfield), 10 Conte Drive, Pittsfield, MA 01210.
9. Office of Servicemembers' Group Life Insurance, 80 Livingston Avenue, Roseland, NJ 07068.

[FR Doc. 2010–26491 Filed 10–21–10; 8:45 am]

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Federal Register

Friday,
October 22, 2010

Part II

The President

Executive Order 13555—White House Initiative on Educational Excellence for Hispanics

Federal Register
Vol. 75, No. 204
Friday, October 22, 2010

Presidential Documents

Title 3—

The President

Executive Order 13555 of October 19, 2010

White House Initiative on Educational Excellence for Hispanics

By the authority vested in me as President by the Constitution and the laws of the United States of America, to restore the country to its role as the global leader in education, to strengthen the Nation by expanding educational opportunities and improving educational outcomes for Hispanics and Latinos (Hispanics) of all ages, and to help ensure that all Hispanics receive an education that properly prepares them for college, productive careers, and satisfying lives, it is hereby ordered as follows:

Section 1. *Policy.* At more than 52 million strong, including 4 million in Puerto Rico, Hispanics constitute the country's largest and fastest growing minority group. They have had a profound and positive impact on our country through, among other things, their community's strong commitment to family, faith, hard work, and service. Many Hispanics contribute to this Nation bilingually in the English and Spanish languages—a true asset for our country in an increasingly global, interdependent world.

Hispanic students are the largest minority group in our Nation's schools, numbering more than 11 million in our public elementary and secondary school system, and constituting more than 22 percent of all pre-K-12 students. Hispanic students face educational challenges of crisis proportions. Fewer than half of all Hispanic children participate in early childhood education programs, and far too few Hispanic students graduate from high school; of those who do complete high school, many are not adequately prepared for college. Only 12 percent of adult Hispanics have a bachelor's degree, and just 3 percent have completed graduate or professional degree programs. At the same time, large numbers of Hispanic adults lack the education or literacy skills they need to advance their careers; they also are less likely than members of other groups to have taken job- or career-related courses, with the exception of basic education classes, such as English as a second language.

Our country was built on and continues to thrive on its diversity, and there is no doubt that the future of the United States is inextricably linked to the future of the Hispanic community. To reach the ambitious education goals we have set for our Nation, as well as to ensure equality of opportunity for all, we must provide the opportunities that will enable Hispanic students to raise their educational attainment at every level of the American education system. America's future competitiveness in our global economy will be substantially enhanced by improving educational outcomes for Hispanics.

Sec. 2. *White House Initiative on Educational Excellence for Hispanics.*

(a) **Establishment.** There is established the White House Initiative on Educational Excellence for Hispanics (Initiative), to be housed in the Department of Education (Department). The mission of the Initiative shall be to help restore the United States to its role as the global leader in education and to strengthen the Nation by expanding educational opportunities and improving educational outcomes for Hispanics of all ages and by helping to ensure that all Hispanics receive a complete and competitive education that prepares them for college, a career, and productive and satisfying lives.

(b) **Initiative Administration.** There shall be an Executive Director of the Initiative, to be appointed by the Secretary of Education (Secretary). The Initiative shall be advised by the Commission established under section

3 of this order and supported by the Working Group established under subsection (c) of this section. The Department shall provide the staff, resources, and assistance for the Initiative and the Working Group. To the extent permitted by law, departments, agencies, and offices represented on the Working Group shall provide resources, including personnel detailed to the Initiative, to assist the Department in meeting the objectives of this order.

(c) **Interagency Working Group.**

(1) There is established the Federal Interagency Working Group on Educational Excellence for Hispanics (Working Group), which shall be convened and chaired by the Initiative's Executive Director.

(2) The Working Group shall consist of senior officials from the Department, the White House Domestic Policy Council, the Department of Labor, and the Department of Health and Human Services, as well as such additional departments, agencies, and offices as the President may designate. Senior officials shall be designated by the heads of their respective departments, agencies, and offices.

(3) The Initiative's Executive Director may establish subgroups of the Working Group to focus on different aspects of the educational system or educational challenges facing Hispanics, such as early childhood education, K?12 education, higher education, career and technical education, language acquisition, and adult education.

(d) **Initiative Objectives.**

(1) To expand educational opportunities, improve education outcomes, and deliver a complete and competitive education for all Hispanics, the Initiative shall, consistent with law, promote, encourage, and undertake efforts designed to meet the following objectives:

(i) increasing general understanding of the causes of the educational challenges faced by Hispanic students;

(ii) increasing the percentage of Hispanic children who enter kindergarten ready for success by improving access by Hispanics to high-quality programs and services that encourage the early learning and development of children from birth through age 5;

(iii) implementing successful and innovative education reform strategies and practices in America's public schools to ensure that Hispanic students, like their peers, receive a rigorous and well-rounded education, and have access to student support services that will prepare them for college, a career, and civic participation;

(iv) ensuring that all Hispanic students have access to excellent teachers and school leaders, in part by supporting efforts to improve the recruitment, preparation, development, and retention of successful Hispanic teachers and school leaders and other effective teachers and school leaders responsible for the education of Hispanic students;

(v) reducing the dropout rate of Hispanic students and helping Hispanic students graduate from high school prepared for college and a career, in part by promoting a positive school climate and supporting successful and innovative dropout prevention and recovery strategies that better engage Hispanic youths in their learning, help them catch up academically, and provide those who have left the educational system with pathways to reentry;

(vi) increasing college access and success for Hispanic students and providing support to help ensure that a greater percentage of Hispanics complete college and contribute to the goal of having America again lead the world in the proportion of college graduates by 2020, in part through strategies to strengthen the capacity of Hispanic-Serving Institutions, community colleges, and other institutions of higher education serving large numbers of Hispanic students; and

(vii) enhancing the educational and life opportunities of Hispanics by fostering positive family and community engagement, improving the quality of, and expanding access to, adult education, literacy, and career and technical education, as well as increasing opportunities for education and career advancement in the fields of science, technology, engineering, and mathematics.

(2) In working to fulfill its mission and objectives, the Initiative shall, consistent with law:

(i) help ensure that Federal programs and initiatives administered by the Department and other agencies are serving and meeting the needs of Hispanic children, youths, and adults;

(ii) work closely with the Executive Office of the President on key Administration priorities related to the education of Hispanics;

(iii) increase the Hispanic community's participation in, and capacity to participate in, the Department's programs and education-related programs at other executive departments and agencies;

(iv) advise Department officials and, through the Working Group, other agency officials on issues related to the Hispanic community and the educational attainment of Hispanic students;

(v) advise the Secretary on the development, implementation, and coordination of educational programs and initiatives at the Department and other agencies designed to improve educational opportunities and outcomes for Hispanics of all ages;

(vi) encourage and develop partnerships with public, private, philanthropic, and nonprofit stakeholders to improve Hispanics' readiness for school, college, and career, as well as their college persistence and completion; and

(vii) develop a national network of individuals, organizations, and communities to share and implement best practices related to the education of Hispanics.

(3) The Initiative shall periodically publish reports on its activities. The Secretary and the Executive Director of the Initiative, in consultation with the Interagency Working Group and the Chair of the Commission established under section 3 of this order, may develop and submit to the President recommendations designed to advance and promote educational opportunities and attainment for Hispanics, including recommendations for short- and long-term initiatives.

(e) **Collaboration Among White House Initiatives.** The White House Initiatives on Educational Excellence for Hispanics, Historically Black Colleges and Universities, Tribal Colleges and Universities, and Asian-American and Pacific Islanders shall work together whenever appropriate in light of their shared objectives.

Sec. 3. *President's Advisory Commission on Educational Excellence for Hispanics.* There is established the President's Advisory Commission on Educational Excellence for Hispanics (Commission) in the Department.

(a) **Commission Mission and Scope.** The Commission shall advise the President and the Secretary on matters pertaining to the educational attainment of the Hispanic community, including:

(1) developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages;

(2) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies;

(3) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; and

(4) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

The Commission shall meet periodically, but at least twice a year, and may work through task forces composed exclusively of Commission members, as appropriate.

(b) **Commission Membership and Chair.**

(1) The Commission shall consist of no more than 30 members appointed by the President. The Commission may include individuals with relevant experience or subject matter expertise that the President deems appropriate, as well as individuals who may serve as representatives of a variety of sectors, including the education sector (early childhood education, elementary and secondary education, higher education, career and technical education, and adult education), labor organizations, research institutions, corporate and financial institutions, public and private philanthropic organizations, and nonprofit and community-based organizations at the national, State, regional, or local levels.

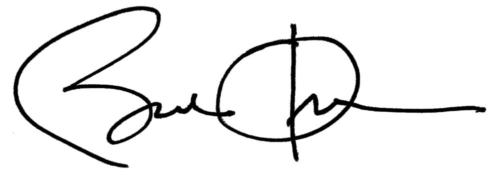
(2) The President shall designate one of the members to serve as Chair of the Commission, who shall work with the Initiative's Executive Director to convene regular meetings of the Commission, determine its agenda, and direct its work, consistent with this order.

(c) **Commission Administration.** The Executive Director of the Initiative shall also serve as the Executive Director of the Commission and administer the work of the Commission. The Department shall provide funding and administrative support for the Commission, to the extent permitted by law. Members of the Commission shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the administration of the Commission, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary, in accordance with the guidelines issued by the Administrator of General Services.

Sec. 4. *General Provisions.*

(a) This order supersedes Executive Order 13230 of October 12, 2001.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
October 19, 2010.

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