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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 14, 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

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Federal Register
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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

2 CFR Part 3373

45 CFR Part 1173

RIN 3136–AA30

National Endowment for the Humanities Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, currently located within Part 1173 of Title 45 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in NEH's policy or procedures for drug-free workplace.

DATES: This final rule is effective on October 29, 2010 without further action. Submit comments by September 29, 2010 on any unintended changes this action makes in NEH policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, NEH will revise the rule.

ADDRESSES: You may submit comments by either one of the following methods: e-mail: *sdaisey@neh.gov*, or by mail: Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Ave., NW., Room 311, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Susan G. Daisey at 202–606–8494 or e-mail her at *sdaisey@neh.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Drug-Free Workplace Act of 1988 [Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*] was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants [54 FR 4946, January 31, 1989]. The rule was a subpart of the Governmentwide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments [55 FR 21681, May 25, 1990].

The agencies proposed an update to the drug-free workplace common rule in 2002 [67 FR 3266, January 23, 2002] and finalized it in 2003 [68 FR 66534, November 26, 2003]. The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 [Pub. L. 105–85, div. A, title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838], the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements [69 FR 26276, May 11, 2004], OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing [70 FR 51863, August 31, 2005] and finalizing [71 FR 66431, November 15, 2006] Governmentwide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment [73 FR 55776, September 26, 2008] and finalized [74 FR 28149, June 15, 2009] Governmentwide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Governmentwide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, NEH is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 45 CFR part 1173. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 3373 to adopt the Governmentwide policies and procedures in the OMB guidance.

Invitation To Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 45 CFR part 1173.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the "Background" section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by Federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in NEH

policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that "good cause" exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on October 29, 2010 without further action, unless we receive adverse comment by September 29, 2010. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 3373

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 1173

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the NEH amends the Code of Federal Regulations, Title 2, Subtitle B, chapter XXIII, and Title 45 chapter 11, part 1173, as follows:

Title 2—Grants and Agreements

■ 1. Add part 3373 in Subtitle B, Chapter XXIII, to read as follows:

PART 3373—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Authority: 41 U.S.C. 701–707.

§ 3373.10 What does this part do?

This part requires that the award and administration of NEH grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as "the Act") that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the NEH's grants and cooperative agreements; and

(b) Establishes NEH policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§ 3373.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (*see* table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a NEH grant or cooperative agreement; or

(b) NEH awarding official.

§ 3373.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 3373.225	Whom in the NEH a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 3373.300	Whom in the NEH a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(3) 2 CFR 182.500	§ 3373.500	Who in the NEH is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505	§ 3373.505	Who in the NEH is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, NEH policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 3373.225 Whom in the NEH does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the Director, Office of Grant Management, NEH.

Subpart C—Requirements for Recipients Who Are Individuals

§ 3373.300 Whom in the NEH does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the Director, Office of Grant Management, NEH.

Subpart D—Responsibilities of Agency Awarding Officials

§ 3373.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR Part 3373, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 3373.500 Who in the NEH determines that a recipient other than an individual violated the requirements of this part?

The NEH General Counsel is the agency official authorized to make the determination under 2 CFR 182.500.

§ 3373.505 Who in the NEH determines that a recipient who is an individual violated the requirements of this part?

The NEH General Counsel is the agency official authorized to make the determination under 2 CFR 182.505.

Subpart F—Definitions [Reserved]

Title 45—Public Welfare

Chapter XI—National Foundation on the Arts and the Humanities

■ 2. Remove Part 1173.

Michael P. McDonald,

General Counsel.

[FR Doc. 2010–21600 Filed 8–27–10; 8:45 am]

BILLING CODE 7536–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13, 47, and 91

[Docket No. FAA–2008–0118; Amdt. Nos. 13–34, 47–29, 91–318]

RIN 2120–AI89

Re-Registration and Renewal of Aircraft Registration; OMB Approval of Information Collection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; approval of the information collection.

SUMMARY: This document announces Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, "Re-Registration and Renewal of Aircraft Registration," which was published on July 20, 2010.

DATES: The FAA received OMB approval for the information collection requirements in 14 CFR part 47 on August 16, 2010. The rule becomes effective on October 1, 2010.

FOR FURTHER INFORMATION CONTACT: John G. Bent, Civil Aviation Registry, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169; telephone: (405) 954–4331.

SUPPLEMENTARY INFORMATION: On July 20, 2010, the FAA published the final rule, "Re-Registration and Renewal of Aircraft Registration" (75 FR 41968). Over a 3-year period, this rule will terminate the registration of all aircraft registered before October 1, 2010, and will require the re-registration of each aircraft to retain U.S. civil aircraft status. The rule also establishes a system for a 3-year recurrent expiration and renewal of registration for all aircraft issued a registration certificate on or after October 1, 2010. The final rule amends the FAA's regulations to provide standards for the timely cancellation of registration (N-numbers) for unregistered aircraft. This final rule makes other minor changes to establish consistency and ensure the regulations conform to statute or current Registry practices. The amendments will improve the accuracy of the Civil Aviation Registry.

The rule contained information collection requirements that had not yet been approved by the Office of Management and Budget at the time of publication. In accordance with the Paperwork Reduction Act, OMB approved that request on August 16, 2010, and assigned the information collection OMB Control Number 2120–0729. The FAA request was approved by OMB for a term of 18 months and expires on February 29, 2010. This notice is being published to inform affected parties of the approval of the information collection requirements of 14 CFR part 47.

Issued in Washington, DC, on August 24, 2010.

Dennis R. Pratte, II,

Acting Director, Office of Rulemaking.

[FR Doc. 2010–21561 Filed 8–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Final Airworthiness Design Standards for Acceptance Under the Primary Category Rule; Orlando Helicopter Airways (OHA), Inc., Models Cessna 172I, 172K, 172L, and 172M

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of final Airworthiness Design Standards.

SUMMARY: This Airworthiness Design Standard is issued to OHA, Inc., for certification under primary category regulations of modified Cessna 172I, 172K, 172L, and 172M airplanes.

DATES: This Airworthiness Design Standard is effective September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie B. Taylor, Aerospace Engineer, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, FAA; telephone number (816) 329–4134, fax number (816) 329–4090, e-mail at *leslie.b.taylor@faa.gov.*

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this information by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

Background

The "primary" category for aircraft was created specifically for the simple, low performance personal aircraft. Section 21.17(f) provides a means for applicants to propose airworthiness standards for their particular primary category aircraft. The FAA procedure establishing appropriate airworthiness standards includes reviewing and possibly revising the applicant's proposal, publication of the submittal in the **Federal Register** for public review and comment, and addressing the comments. After all necessary revisions, the standards are published as approved FAA airworthiness standards.

Discussion of Comments

Existence of Proposed Airworthiness Design Standards for Acceptance Under the Primary Category Rule; Orlando Helicopter Airways (OHA), Inc., Models Cessna 172I, 172K, 172L, and 172M airplanes was published in the **Federal Register** on June 21, 2010, 75 FR 34953. No comments were received, and the airworthiness design standards are adopted as proposed.

Applicability

As discussed above, these airworthiness design standards under the primary category rule are applicable to the C172I, C172K, C172L, and C172M. Should OHA, Inc., wish to apply these airworthiness design standards to other airplane models, OHA, Inc. must submit a new airworthiness design standard application under the primary rule category.

Conclusion

This action affects only certain airworthiness design standards on Cessna model C172I, C172K, C172L, C172M airplanes. It is not a standard of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Citation

The authority citation for these airworthiness standards is as follows:

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

Final Airworthiness Standards for Acceptance Under the Primary Category Rule

For all airplane modifications and the powerplant installation:

Part 3 of the Civil Air Regulations (CAR 3), effective November 1, 1949, as amended by Amendments 3–1 through 3–12, except for § 3.415, Engines and § 3.416(a), Propellers; and 14 CFR part 23, §§ 23.603, 23.863, 23.907, 23.961, 23.1322 and 23.1359 (latest amendments through Amendment 23–59) as applicable to these airplanes.

For engine assembly certification:

Joint Aviation Requirements 22 (JAR 22), "Sailplanes and Powered Sailplanes," Change 5, dated October 28, 1995, Subpart H only.

For propeller certification:

14 CFR part 35 as amended through Amendment 35–8 except § 35.1 (or a propeller with an FAA type certificate may be used).

For noise standards:

14 CFR part 36, Amendment 36–28, Appendix G.

Issued in Kansas City, Missouri, on August 19, 2010.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–21444 Filed 8–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 776

[No. USN–2010–0019]

RIN 0703–AA88

Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General

AGENCY: Department of the Navy, DoD.

ACTION: Interim final rule.

SUMMARY: The Department of the Navy (DON) is amending its rules to update existing sections relating to the professional conduct of attorneys practicing under the cognizance and supervision of the Judge Advocate General (JAG) for clients with diminished capacity. The amendment comports with current policy reflected in JAG Instruction 5803.1 (Series), Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General.

The new rule allows a covered attorney to take preventative action when the attorney reasonably believes that a client has diminished capacity and is at risk of substantial physical harm to himself or herself unless immediate action is taken. Not having this immediate change negatively impacts an attorney's ability to preserve life when a client expresses the intent to harm himself or herself or an attorney receives information about a client's suicidal intentions. The JAG has directed that this change take effect immediately as the former version of the rule potentially created a professional responsibility violation if an attorney acted to preserve life or risked the client's life.

DATES: This interim final rule is effective August 30, 2010. Written comments received at the address indicated below by October 29, 2010 will be considered and addressed in the final rule.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

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

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and

docket or RIN number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Janelle M. Beal, JAGC, U.S. Navy, Office of the Judge Advocate General (Administrative Law), Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone: 703–614–7403.

SUPPLEMENTARY INFORMATION: The Department of the Navy is amending 32 CFR part 776, to comport with current policy as stated in JAG Instruction 5803.1 (Series) governing the professional conduct of attorneys practicing under the cognizance and supervision of the Judge Advocate General for clients with diminished capacity. This rule updates the existing section to reflect the current policy of the Judge Advocate General to permit a covered attorney to take protective action and disclose a client's condition when he or she reasonably believes that the client has diminished capacity and is at risk of substantial physical self-harm if action is not taken. Thus, aligning the policy with ABA Model Rules of Professional Conduct (2010), Rule 1.14 (Client with Diminished Capacity). Interested persons are invited to comment in writing on this amendment. All written comments received will be considered in finalizing the amendment to 32 CFR part 776. It has been determined that this rule amendment is not a major rule within the criteria specified in Executive Order 12866, as amended by Executive Order 13258, and does not have substantial impact on the public.

Matters of Regulatory Procedure

Executive Order 12866, "*Regulatory Planning and Review*"

It has been determined that 32 CFR Part 776 is not a significant regulatory action. The rule does not:

(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 this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that 32 CFR part 776 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 776 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Federalism (Executive Order 13132)

It has been certified that 32 CFR Part 776 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 776

Rules of Professional Conduct, and Complaint Processing Procedures.

■ For the reasons set forth in the preamble, the Department of the Navy amends 32 CFR Part 776, as follows:

PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL

■ 1. The authority citation for 32 CFR Part 776 continues to read as follows:

Authority: 10 U.S.C. 806, 806a, 826, 827.

Subpart B—Rules of Professional Conduct

■ 2. Revise § 776.33 to read as follows:

§ 776.33 Client with diminished capacity.

(a) *Client with diminished capacity:* (1) When a client's ability to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment, or for some other reason, the covered attorney shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

(2) When the covered attorney reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the covered attorney may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.

(3) Information relating to the representation of a client with diminished capacity is protected by § 776.25 of this part. When taking protective action pursuant to paragraph (a)(2) of this section, the covered attorney is impliedly authorized under § 776.25 of this part to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

(b) [Reserved]

Dated: August 24, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–21499 Filed 8–27–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8145]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

publication in the **Federal Register** on a subsequent date.

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

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

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

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

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

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

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

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 17, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Barker, Village of, Niagara County	360498	April 10, 1975, Emerg; May 1, 1984, Reg; September 17, 2010, Susp.	Sept. 17, 2010 ..	Sept. 17, 2010.
Cambria, Town of, Niagara County	360499	July 7, 1975, Emerg; September 30, 1983, Reg; September 17, 2010, Susp.	.....do	Do.
Hartland, Town of, Niagara County	360500	May 1, 1975, Emerg; October 7, 1983, Reg; September 17, 2010, Susp.	.....do	Do.
Lewiston, Town of, Niagara County	360502	March 27, 1974, Emerg; June 18, 1980, Reg; September 17, 2010, Susp.	.....do	Do.
Lockport, City of, Niagara County	360503	December 17, 1973, Emerg; February 4, 1981, Reg; September 17, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Lockport, Town of, Niagara County	361013	December 17, 1973, Emerg; September 2, 1981, Reg; September 17, 2010, Susp.	.....do	Do.
Middleport, Village of, Niagara County	360505	April 8, 1975, Emerg; August 1, 1983, Reg; September 17, 2010, Susp.	.....do	Do.
North Tonawanda, City of, Niagara County.	360508	May 14, 1975, Emerg; January 6, 1982, Reg; September 17, 2010, Susp.	.....do	Do.
Pendleton, Town of, Niagara County	360509	April 12, 1974, Emerg; January 6, 1982, Reg; September 17, 2010, Susp.	.....do	Do.
Porter, Town of, Niagara County	360510	July 17, 1974, Emerg; August 15, 1983, Reg; September 17, 2010, Susp.	.....do	Do.
Royalton, Town of, Niagara County	360511	November 29, 1974, Emerg; July 6, 1979, Reg; September 17, 2010, Susp.	.....do	Do.
Wheatfield, Town of, Niagara County ...	360513	July 5, 1973, Emerg; July 16, 1981, Reg; September 17, 2010, Susp.	.....do	Do.
Youngstown, Village of, Niagara County	360515	March 30, 1973, Emerg; June 4, 1980, Reg; September 17, 2010, Susp.	.....do	Do.
Region III				
Virginia:				
Clifton, Town of, Fairfax County	510186	December 5, 1973, Emerg; May 2, 1977, Reg; September 17, 2010, Susp.	.....do	Do.
Fairfax County, Unincorporated Areas ..	515525	June 19, 1970, Emerg; January 7, 1972, Reg; September 17, 2010, Susp.	.....do	Do.
Gloucester County, Unincorporated Areas.	510071	March 25, 1974, Emerg; August 4, 1987, Reg; September 17, 2010, Susp.	.....do	Do.
Herndon, Town of, Fairfax County	510052	May 21, 1973, Emerg; August 1, 1979, Reg; September 17, 2010, Susp.	.....do	Do.
Irvington, Town of, Lancaster County ...	510221	August 18, 1975, Emerg; August 4, 1987, Reg; September 17, 2010, Susp.	.....do	Do.
Lancaster County, Unincorporated Areas.	510084	November 27, 1973, Emerg; March 4, 1988, Reg; September 17, 2010, Susp.	.....do	Do.
Northumberland County, Unincorporated Areas.	510107	October 9, 1973, Emerg; July 4, 1989, Reg; September 17, 2010, Susp.	.....do	Do.
Vienna, Town of, Fairfax County	510053	August 8, 1974, Emerg; February 3, 1982, Reg; September 17, 2010, Susp.	.....do	Do.
White Stone, Town of, Lancaster County.	510235	August 18, 1975, Emerg; September 24, 1984, Reg; September 17, 2010, Susp.	.....do	Do.
Region IV				
Alabama:				
Aliceville, City of, Pickens County	010180	February 8, 1974, Emerg; July 17, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Ethelsville, Town of, Pickens County	010281	December 21, 1978, Emerg; March 18, 1985, Reg; September 17, 2010, Susp.	.....do	Do.
Gordo, Town of, Pickens County	010220	August 6, 1974, Emerg; August 15, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Pickens County, Unincorporated Areas	010283	May 25, 1976, Emerg; June 4, 1990, Reg; September 17, 2010, Susp.	.....do	Do.
Pickensville, Town of, Pickens County	010423	N/A, Emerg; June 6, 1996, Reg; September 17, 2010, Susp.	.....do	Do.
Reform, Town of, Pickens County	010221	July 31, 1974, Emerg; July 3, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Georgia:				
Comer, City of, Madison County	130211	May 12, 1975, Emerg; June 1, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Morganton, City of, Fannin County	130449	November 17, 1976, Emerg; April 2, 1986, Reg; September 17, 2010, Susp.	.....do	Do.
Mountain City, Town of, Rabun County	130252	January 30, 1980, Emerg; July 9, 1982, Reg; September 17, 2010, Susp.	.....do	Do.
Randolph County, Unincorporated Areas.	130553	May 16, 1997, Emerg; September 17, 2010, Reg; September 17, 2010, Susp.	.....do	Do.
Kentucky:				
Hustonville, City of, Lincoln County	210144	August 26, 1975, Emerg; September 27, 1985, Reg; September 17, 2010, Susp.	.....do	Do.
Stanford, City of, Lincoln County	210145	February 26, 1975, Emerg; September 27, 1985, Reg; September 17, 2010, Susp.	.....do	Do.
Mississippi:				
Alcorn County, Unincorporated Areas ...	280267	N/A, Emerg; February 27, 1992, Reg; September 17, 2010, Susp.	.....do	Do.
Coffeeville, Town of, Yalobusha County	280186	April 8, 1975, Emerg; September 4, 1986, Reg; September 17, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Corinth, City of, Alcorn County	280002	July 26, 1974, Emerg; March 16, 1981, Reg; September 17, 2010, Susp.	.....do	Do.
Duck Hill, Town of, Montgomery County	280118	June 23, 1975, Emerg; April 2, 1986, Reg; September 17, 2010, Susp.	.....do	Do.
Louisville, City of, Winston County	280185	February 11, 1974, Emerg; June 15, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Montgomery County, Unincorporated Areas.	280212	April 11, 1974, Emerg; September 1, 1987, Reg; September 17, 2010, Susp.	.....do	Do.
Rienzi, Town of, Alcorn County	280322	October 30, 2006, Emerg; September 17, 2010, Reg; September 17, 2010, Susp.	.....do	Do.
Water Valley, City of, Yalobusha County.	280187	December 5, 1974, Emerg; September 27, 1985, Reg; September 17, 2010, Susp.	.....do	Do.
Winona, City of, Montgomery County	280119	February 18, 1975, Emerg; July 2, 1987, Reg; September 17, 2010, Susp.	.....do	Do.
Winston County, Unincorporated Areas	280308	December 21, 1978, Emerg; August 19, 1985, Reg; September 17, 2010, Susp.	.....do	Do.
Tennessee:				
Ashland City, Town of, Cheatham County.	470027	March 10, 1975, Emerg; April 1, 1981, Reg; September 17, 2010, Susp.	.....do	Do.
Cheatham County, Unincorporated Areas.	470026	September 27, 1974, Emerg; May 19, 1981, Reg; September 17, 2010, Susp.	.....do	Do.
Decatur, Town of, Meigs County	470134	March 27, 1975, Emerg; June 3, 1986, Reg; September 17, 2010, Susp.	.....do	Do.
Kingston Springs, Town of, Cheatham County.	470289	June 11, 1984, Emerg; June 11, 1984, Reg; September 17, 2010, Susp.	.....do	Do.
Pegram, Town of, Cheatham County	470291	April 9, 1987, Emerg; April 9, 1987, Reg; September 17, 2010, Susp.	.....do	Do.
Region V				
Illinois:				
Bonnie, Village of, Jefferson County	170306	September 10, 1975, Emerg; August 19, 1985, Reg; September 17, 2010, Susp.	.....do	Do.
East Dubuque, City of, Jo Daviess County.	170752	June 25, 1975, Emerg; October 18, 1983, Reg; September 17, 2010, Susp.	.....do	Do.
Galena, City of, Jo Daviess County	175168	August 27, 1971, Emerg; July 20, 1973, Reg; September 17, 2010, Susp.	.....do	Do.
Hanover, Village of, Jo Daviess County	170755	July 21, 1975, Emerg; May 4, 1989, Reg; September 17, 2010, Susp.	.....do	Do.
Ina, Village of, Jefferson County	170307	March 2, 1976, Emerg; May 25, 1984, Reg; September 17, 2010, Susp.	.....do	Do.
Jefferson County, Unincorporated Areas.	170305	October 31, 2000, Emerg; September 17, 2010, Reg; September 17, 2010, Susp.	.....do	Do.
Jo Daviess County, Unincorporated Areas.	170902	April 19, 1979, Emerg; January 18, 1984, Reg; September 17, 2010, Susp.	.....do	Do.
Mount Vernon, City of, Jefferson County.	170308	September 30, 1974, Emerg; February 15, 1984, Reg; September 17, 2010, Susp.	.....do	Do.
Peoria Heights, Village of, Peoria, Tazewell, and Woodford Counties.	170537	October 13, 1972, Emerg; November 1, 1979, Reg; September 17, 2010, Susp.	.....do	Do.
Roanoke, Village of, Woodford County	170727	June 17, 1975, Emerg; September 4, 1987, Reg; September 17, 2010, Susp.	.....do	Do.
Spring Bay, Village of, Woodford County.	170887	August 26, 1977, Emerg; June 4, 1980, Reg; September 17, 2010, Susp.	.....do	Do.
Washburn, Village of, Marshall and Woodford Counties.	170728	January 27, 1975, Emerg; July 2, 1987, Reg; September 17, 2010, Susp.	.....do	Do.
Woodford County, Unincorporated Areas.	170730	September 7, 1973, Emerg; February 1, 1984, Reg; September 17, 2010, Susp.	.....do	Do.
Michigan:				
Bangor, Township of, Bay County	260019	March 30, 1973, Emerg; July 2, 1979, Reg; September 17, 2010, Susp.	.....do	Do.
Bay City, City of, Bay County	260020	March 30, 1973, Emerg; September 1, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Essexville, City of, Bay County	260021	March 30, 1973, Emerg; September 1, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Fraser, Township of, Bay County	260657	November 13, 1981, Emerg; November 13, 1981, Reg; September 17, 2010, Susp.	.....do	Do.
Hampton, Township of, Bay County	260023	March 30, 1973, Emerg; August 1, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Kawkawlin, Township of, Bay County	260658	January 29, 1979, Emerg; February 1, 1979, Reg; September 17, 2010, Susp.	.....do	Do.
Monitor, Township of, Bay County	260358	July 21, 1982, Emerg; August 19, 1985, Reg; September 17, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Pinconning, City of, Bay County	260607	March 17, 1975, Emerg; August 3, 1981, Reg; September 17, 2010, Susp.	.....do	Do.
Pinconning, Township of, Bay County	260025	March 30, 1973, Emerg; September 1, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Region VII				
Missouri:				
Bolivar, City of, Polk County	290299	July 24, 1975, Emerg; June 15, 1988, Reg; September 17, 2010, Susp.	.....do	Do.
Marshfield, City of, Webster County	290685	June 13, 1975, Emerg; September 10, 1984, Reg; September 17, 2010, Susp.	.....do	Do.
Seymour, City of, Webster County	290933	N/A, Emerg; February 11, 2005, Reg; September 17, 2010, Susp.	.....do	Do.
Webster County, Unincorporated Areas	290848	N/A, Emerg; April 14, 2003, Reg; September 17, 2010, Susp.	.....do	Do.
Region X				
Oregon:				
Astoria, City of, Clatsop County	410028	October 16, 1974, Emerg; August 1, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Cannon Beach, City of, Clatsop County	410029	March 6, 1974, Emerg; September 1, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Clatsop County, Unincorporated Areas	410027	February 7, 1974, Emerg; July 3, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Gearhart, City of, Clatsop County	410030	April 11, 1974, Emerg; May 15, 1978, Reg; September 17, 2010, Susp.	.....do	Do.
Seaside, City of, Clatsop County	410032	March 25, 1974, Emerg; September 5, 1979, Reg; September 17, 2010, Susp.	.....do	Do.
Warrenton, City of, Clatsop County	410033	July 16, 1975, Emerg; May 15, 1978, Reg; September 17, 2010, Susp.	.....do	Do.

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

Dated: August 19, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2010–21594 Filed 8–27–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8143]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
West Virginia:				
Ansted, Town of, Fayette County	540027	June 10, 1975, Emerg; October 30, 1981, Reg; September 3, 2010, Susp.	Sept. 3, 2010	Sept. 3, 2010.
Gauley Bridge, Town of, Fayette County.	540294	September 22, 1989, Emerg; September 18, 1991, Reg; September 3, 2010, Susp.	.....do	Do.
Fayette County, Unincorporated Areas	540026	April 16, 1975, Emerg; March 4, 1988, Reg; September 3, 2010, Susp.	.....do	Do.
Meadow Bridge, Town of, Fayette County.	540028	October 1, 1975, Emerg; January 2, 1991, Reg; September 3, 2010, Susp.	.....do	Do.
Montgomery, City of, Fayette and Kahawha Counties.	540029	July 2, 1975, Emerg; June 1, 1982, Reg; September 3, 2010, Susp.	.....do	Do.
Mount Hope, City of, Fayette County	540280	October 30, 1974, Emerg; August 10, 1979, Reg; September 3, 2010, Susp.	.....do	Do.
Oak Hill, City of, Fayette County	540031	October 24, 1974, Emerg; January 18, 1980, Reg; September 3, 2010, Susp.	.....do	Do.
Pax, Town of, Fayette County	540032	July 8, 1975, Emerg; August 10, 1979, Reg; September 3, 2010, Susp.	.....do	Do.
Smithers, Town of, Fayette County	540033	June 12, 1975, Emerg; April 15, 1982, Reg; September 3, 2010, Susp.	.....do	Do.
Region IV				
Alabama:				
Butler, City of, Choctaw County	010033	August 7, 1975, Emerg; July 5, 1982, Reg; September 3, 2010, Susp.	.....do	Do.
Choctaw County, Unincorporated Areas	010310	September 25, 1974, Emerg; September 30, 1988, Reg; September 3, 2010, Susp.	.....do	Do.
Gilbertown, Town of, Choctaw County	010034	January 29, 1979, Emerg; July 3, 1986, Reg; September 3, 2010, Susp.	.....do	Do.
Hueytown, City of, Jefferson County	010337	April 22, 1975, Emerg; January 2, 1981, Reg; September 3, 2010, Susp.	.....do	Do.
Lipscomb, City of, Jefferson County	010126	July 25, 1975, Emerg; January 2, 1981, Reg; September 3, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Pennington, Town of, Choctaw County	010035	July 16, 1979, Emerg; September 18, 1985, Reg; September 3, 2010, Susp.	.....do	Do.
Silas, Town of, Choctaw County	010036	N/A, Emerg; February 27, 2006, Reg; September 3, 2010, Susp.	.....do	Do.
Georgia: Stewart County, Unincorporated Areas.	130393	September 8, 1986, Emerg; July 1, 1987, Reg; September 3, 2010, Susp.	.....do	Do.
Mississippi:				
New Albany, Town of, Union County	280174	March 25, 1975, Emerg; September 4, 1985, Reg; September 3, 2010, Susp.	.....do	Do.
Union County, Unincorporated Areas ...	280237	December 3, 2007, Emerg; September 3, 2010, Reg; September 3, 2010, Susp.	.....do	Do.
Tennessee:				
Byrdstown, City of, Pickett County	470147	February 12, 1976, Emerg; July 3, 1986, Reg; September 3, 2010, Susp.	.....do	Do.
Pickett County, Unincorporated Areas ..	470384	November 17, 1994, Emerg; February 1, 2006, Reg; September 3, 2010, Susp.	.....do	Do.
Region VI				
Louisiana:				
Basile, Town of, Evangeline Parish	220065	January 22, 1976, Emerg; January 15, 1988, Reg; September 3, 2010, Susp.	.....do	Do.
Evangeline Parish, Unincorporated Areas.	220064	January 12, 1976, Emerg; August 1, 1988, Reg; September 3, 2010, Susp.	.....do	Do.
Mamou, Town of, Evangeline Parish	220067	September 13, 1974, Emerg; November 1, 1985, Reg; September 3, 2010, Susp.	.....do	Do.
Pine Prairie, Village of, Evangeline Parish.	220068	July 8, 1975, Emerg; June 25, 1976, Reg; September 3, 2010, Susp.	.....do	Do.
Turkey Creek, Village of, Evangeline Parish.	220069	August 11, 2008, Emerg; September 1, 2008, Reg; September 3, 2010, Susp.	.....do	Do.
Ville Platte, City of, Evangeline Parish ..	220070	April 13, 1976, Emerg; October 15, 1985, Reg; September 3, 2010, Susp.	.....do	Do.
Oklahoma:				
Bethel Acres, Town of, Pottawatomie County.	400346	June 16, 1989, Emerg; December 1, 1989, Reg; September 3, 2010, Susp.	.....do	Do.
Brooksville, City of, Pottawatomie County.	400469	September 19, 1979, Emerg; August 19, 1985, Reg; September 3, 2010, Susp.	.....do	Do.
Kickapoo Tribal Lands, Pottawatomie County.	400563	February 26, 2002, Emerg; September 3, 2010, Reg; September 3, 2010, Susp.	.....do	Do.
McLoud, Town of, Pottawatomie County	400398	December 27, 1977, Emerg; October 16, 1987, Reg; September 3, 2010, Susp.	.....do	Do.
Pottawatomie County, Unincorporated Areas.	400496	March 26, 1984, Emerg; June 1, 1988, Reg; September 3, 2010, Susp.	.....do	Do.
Shawnee, City of, Pottawatomie County	400178	April 2, 1975, Emerg; July 2, 1980, Reg; September 3, 2010, Susp.	.....do	Do.
Tecumseh, City of, Pottawatomie County.	400179	February 10, 1975, Emerg; July 16, 1980, Reg; September 3, 2010, Susp.	.....do	Do.
Texas:				
Austin County, Unincorporated Areas ...	480704	November 21, 1975, Emerg; January 17, 1990, Reg; September 3, 2010, Susp.	.....do	Do.
Bellville, City of, Austin County	481095	N/A, Emerg; June 17, 1998, Reg; September 3, 2010, Susp.	.....do	Do.
Brazos Country, City of, Austin County	481693	N/A, Emerg; December 18, 2001, Reg; September 3, 2010, Susp.	.....do	Do.
Corrigan, City of, Polk County	480527	January 26, 1978, Emerg; April 20, 1982, Reg; September 3, 2010, Susp.	.....do	Do.
Goodrich, City of, Polk County	481070	November 12, 1980, Emerg; June 19, 1985, Reg; September 3, 2010, Susp.	.....do	Do.
Livingston, City of, Polk County	480528	May 21, 1975, Emerg; September 1, 1987, Reg; September 3, 2010, Susp.	.....do	Do.
Onalaska, City of, Polk County	480974	November 6, 1996, Emerg; November 1, 2007, Reg; September 3, 2010, Susp.	.....do	Do.
Polk County, Unincorporated Areas	480526	September 5, 1990, Emerg; March 1, 1991, Reg; September 3, 2010, Susp.	.....do	Do.
San Felipe, Town of, Austin County	480705	April 7, 1976, Emerg; January 3, 1986, Reg; September 3, 2010, Susp.	.....do	Do.
Wood County, Unincorporated Areas ...	481055	February 21, 2001, Emerg; August 1, 2008, Reg; September 3, 2010, Susp.	.....do	Do.
Yantis, City of, Wood County	481167	December 29, 1980, Emerg; October 26, 1982, Reg; September 3, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IX				
Arizona: Yavapai County, Unincorporated Areas.	040093	January 31, 1975, Emerg; September 18, 1985, Reg; September 3, 2010, Susp.	.....do	Do.
Region X				
Oregon:				
Adams, City of, Umatilla County	410205	February 12, 1976, Emerg; May 15, 1984, Reg; September 3, 2010, Susp.	.....do	Do.
Athena, City of, Umatilla County	410206	June 4, 1975, Emerg; July 16, 1984, Reg; September 3, 2010, Susp.	.....do	Do.
Echo, City of, Umatilla County	410207	April 15, 1975, Emerg; May 15, 1984, Reg; September 3, 2010, Susp.	.....do	Do.
Helix, City of, Umatilla County	410208	January 13, 1976, Emerg; June 1, 1984, Reg; September 3, 2010, Susp.	.....do	Do.
Hermiston, City of, Umatilla County	410209	November 7, 1974, Emerg; October 28, 1977, Reg; September 3, 2010, Susp.	.....do	Do.
Milton-Freewater, City of, Umatilla County.	410210	April 16, 1975, Emerg; September 12, 1978, Reg; September 3, 2010, Susp.	.....do	Do.
Pendleton, City of, Umatilla County	410211	March 3, 1972, Emerg; July 13, 1976, Reg; September 3, 2010, Susp.	.....do	Do.
Pilot Rock, City of, Umatilla County	410212	July 5, 1974, Emerg; August 4, 1988, Reg; September 3, 2010, Susp.	.....do	Do.
Stanfield, City of, Umatilla County	410213	October 2, 1974, Emerg; August 15, 1984, Reg; September 3, 2010, Susp.	.....do	Do.
Ukiah, City of, Umatilla County	410279	August 25, 1975, Emerg; September 24, 1984, Reg; September 3, 2010, Susp.	.....do	Do.
Umatilla, City of, Umatilla County	410214	February 6, 1975, Emerg; September 24, 1984, Reg; September 3, 2010, Susp.	.....do	Do.
Umatilla County, Unincorporated Areas	410204	February 4, 1972, Emerg; June 15, 1978, Reg; September 3, 2010, Susp.	.....do	Do.
Weston, City of, Umatilla County	410215	August 8, 1975, Emerg; September 18, 1987, Reg; September 3, 2010, Susp.	.....do	Do.

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

Dated: August 16, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2010–21597 Filed 8–27–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within

the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Jefferson County, Alabama, and Incorporated Areas Docket Nos.: FEMA–B–1022 and FEMA–B–1051			
Dry Creek	Approximately 630 feet upstream of Navajo Trail Northeast.	+722	City of Center Point, Unincorporated Areas of Jefferson County.
	Just upstream of Chalkville Mountain Road	+958	
Griffin Brook	Approximately 800 feet upstream of Lakeshore Drive	+631	City of Homewood, Unincorporated Areas of Jefferson County.
	Approximately 90 feet upstream of Montgomery Highway	+788	
Huckleberry Branch	Approximately 200 feet downstream of Tyler Road	+514	City of Hoover, City of Vestavia Hills, Unincorporated Areas of Jefferson County.
	Approximately 1,500 feet upstream of Mountain Oaks Drive.	+814	
Little Shades Creek (Cahaba Basin).	Approximately 930 feet upstream of Loch Haven Drive	+432	City of Hoover, City of Mountain Brook, City of Vestavia Hills, Unincorporated Areas of Jefferson County.
	Just upstream of Pipe Line Road	+626	
Little Shades Creek (Shades Creek).	Just downstream Wenonah Oxmoor Road	+514	City of Bessemer, City of Birmingham, Unincorporated Areas of Jefferson County.
	Approximately 2.3 miles downstream of Alabama Highway 150.	+632	
Patton Creek	Approximately 0.6 mile downstream of Alabama Highway 150.	+423	City of Hoover, City of Vestavia Hills, Unincorporated Areas of Jefferson County.
	Approximately 310 feet downstream of West Ridge Drive	+533	
Pinchgut Creek	Approximately 0.7 mile downstream of Watterson Parkway.	+691	City of Birmingham, City of Trussville, Unincorporated Areas of Jefferson County.
	Approximately 2.0 miles upstream of Gadsden Highway	+846	
Turkey Creek	Approximately 0.7 mile downstream of Old Bradford Road	+565	City of Center Point, City of Clay, City of Pinson, Unincorporated Areas of Jefferson County.
	Approximately 950 feet upstream of Eagle Ridge Drive	+885	
Unnamed Creek 9	Just downstream of Alabama Highway 151	+590	City of Center Point, Unincorporated Areas of Jefferson County.
	Just downstream of Pinson Heights Road	+631	
Unnamed Creek 10	Approximately 515 feet downstream of Main Street	+607	City of Center Point, City of Pinson, Unincorporated Areas of Jefferson County.
	Approximately 90 feet downstream of Houston Road	+667	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unnamed Creek 11	Just upstream of Center Point Road	+626	City of Center Point, City of Pinson, Unincorporated Areas of Jefferson County.
	Approximately 1,610 feet upstream of Green Crest Drive	+692	
Valley Creek	Approximately 0.5 mile downstream of Power Plant Road	+431	City of Bessemer, Unincorporated Areas of Jefferson County.
	Approximately 0.5 mile upstream of Power Plant Road	+440	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bessemer
Maps are available for inspection at 1800 3rd Avenue, North, Bessemer, AL 35020.

City of Birmingham
Maps are available for inspection at 710 20th Street, North, Birmingham, AL 35203.

City of Center Point
Maps are available for inspection at 2209 Center Point Parkway, Center Point, AL 35215.

City of Clay
Maps are available for inspection at 6757 Old Springville Road, Pinson, AL 35126.

City of Homewood
Maps are available for inspection at 1903 29th Avenue South, Birmingham, AL 35209.

City of Hoover
Maps are available for inspection at 100 Municipal Drive, Hoover, AL 35236.

City of Mountain Brook
Maps are available for inspection at 56 Church Street, Mountain Brook, AL 35213.

City of Pinson
Maps are available for inspection at 4410 Main Street, Pinson, AL 35126.

City of Trussville
Maps are available for inspection at 131 Main Street, Trussville, AL 35173.

City of Vestavia Hills
Maps are available for inspection at 513 Montgomery Highway, Vestavia Hills, AL 35085.

Unincorporated Areas of Jefferson County
Maps are available for inspection at 716 Richard Arrington, Jr. Boulevard North, Room 260, Birmingham, AL 35203.

Coconino County, Arizona, and Incorporated Areas
Docket No.: FEMA–B–1053

Bow and Arrow Wash	Approximately 50 feet downstream of South Lone Tree Road.	+6,878	City of Flagstaff.
	Approximately 1,800 feet upstream of Lake Mary Road	+6,949	
Peak View Wash	At the confluence with the Rio de Flag	+7,113	City of Flagstaff.
	Approximately 125 feet upstream of Lois Lane	+7,123	
Rio de Flag	At Rio Rancho Road	+6,521	City of Flagstaff, Unincorporated Areas of Coconino County.
	Approximately 150 feet downstream of Route 66	+6,758	
	At the Narrows Dam	+7,087	
	Approximately 565 feet downstream of Hidden Hollow Road.	+7,148	
Schultz Creek	Approximately 175 feet upstream of North Fort Valley Road.	+7,006	City of Flagstaff, Unincorporated Areas of Coconino County.
	Approximately 0.57 mile upstream of Mary Russel Way	+7,140	
Schultz Creek Ponding	Approximately 50 feet upstream of the confluence with the Rio de Flag.	#1	City of Flagstaff, Unincorporated Areas of Coconino County.
	Approximately 175 feet upstream of North Fort Valley Road.	#1	
Switzer Canyon Wash	Approximately 50 feet upstream of the upstream end of the East Route 66 Culvert.	+6,869	City of Flagstaff, Unincorporated Areas of Coconino County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 0.42 mile upstream of Elk Drive	+7,030	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Flagstaff
Maps are available for inspection at Flagstaff City Hall, 211 West Aspen Avenue, Flagstaff, AZ 86001.

Unincorporated Areas of Coconino County
Maps are available for inspection at the Coconino County Department of Community Development, 2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.

Evangeline Parish, Louisiana, and Incorporated Areas
Docket No.: FEMA–B–1038

Bayou Barwick Tributary	At the intersection of Bayou Barwick Tributary and Stagg Road.	+44	Unincorporated Areas of Evangeline Parish.
	At the intersection of Bayou Barwick Tributary and Highway 190.	+44	
Bayou Joe Marcel Tributary #1	At Alton Locks Street	+67	City of Ville Platte.
	At Te Mamou Road	+67	
Bayou Joe Marcel Tributary #2	Approximately 522 feet upstream of Main Street (Base Flood Elevations extend to Bayou Joe Marcel Tributary #3).	+73	City of Ville Platte.
	At Ortego Street (Base Flood Elevations extend to Bayou Joe Marcel Tributary #3).	+74	
Bayou Joe Marcel Tributary #3	Approximately 1,054 feet downstream of Reed Street (Base Flood Elevations extend to Bayou Joe Marcel Tributary #2).	+72	City of Ville Platte.
	Approximately 197 feet downstream of Reed Street (Base Flood Elevations extend to Bayou Joe Marcel Tributary #2).	+74	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Ville Platte
Maps are available for inspection at P.O. Box 390, Ville Platte, LA 70586.

Unincorporated Areas of Evangeline Parish
Maps are available for inspection at 200 Court Street, Suite 207, Ville Platte, LA 70586.

Pottawatomie County, Oklahoma, and Incorporated Areas
Docket No.: FEMA–B–1024

Tributary #1 to Rock Creek	At the confluence with Rock Creek	+974	City of Shawnee.
	Approximately 1,565 feet upstream of Kickapoo Street	+986	
Tributary #1 to Tributary #2 to Rock Creek.	Approximately 500 feet downstream of Union Street	+989	City of Shawnee.
	At 45th Street	+1,021	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Shawnee
Maps are available for inspection at the Pottawatomie County Courthouse, 325 North Broadway, Shawnee, OK 74801.

Umatilla County, Oregon, and Incorporated Areas
Docket Number: FEMA–B–1049

Iskuupla Creek	At the confluence with the Umatilla River	+1,690	Umatilla Indian Reservation.
	Approximately 1.0 mile upstream of Bingham Road	+1,779	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Iskuupla Creek left bank split ...	Approximately 3,000 feet west along Bingham Road from Iskuupla Creek.	+1,682	Umatilla Indian Reservation.
	At the divergence from Iskuupla Creek	+1,707	
Meacham Creek	At the confluence with the Umatilla River	+1,762	Umatilla Indian Reservation.
	Just downstream of Meacham Creek Road Bridge and Railroad Bridge.	+1,819	
Umatilla River	Just upstream of State Highway 11 Bridge	+1,111	City of Pendleton, Umatilla Indian Reservation, Unincorporated Areas of Umatilla County.
	Approximately 700 feet downstream of the confluence with Ryan Creek.	+1,908	
Walla Walla River	At Southeast 17th Avenue	#1	City of Milton-Freewater, Unincorporated Areas of Umatilla County.
	At Northeast 15th Avenue	#1	
Wildhorse Creek	At Range Line 32E/33E	+1,142	Unincorporated Areas of Umatilla County.
	At Township Line 2N/3N	+1,154	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Milton-Freewater
Maps are available for inspection at 722 South Main Street, Milton-Freewater, OR 97862.

City of Pendleton
Maps are available for inspection at 500 Southwest Dorion Avenue, Pendleton, OR 97801.

Umatilla Indian Reservation
Maps are available for inspection at 73239 Confederated Way, Pendleton, OR 97801.

Unincorporated Areas of Umatilla County
Maps are available for inspection at 216 Southeast 4th Street, Pendleton, OR 97801.

Fayette County, West Virginia, and Incorporated Areas
Docket No.: FEMA–B–1061

Smithers Creek	Approximately 700 feet downstream of Carbondale Road	+640	Unincorporated Areas of Fayette County.
	Approximately 550 feet upstream of Carbondale Road	+651	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Fayette County
Maps are available for inspection at the Fayette County Building, Safety Department, 100 Court Street, Fayetteville, WV 25840.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 19, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–21595 Filed 8–27–10; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 08–151, RM–11476, DA 10–1519]

Radio Broadcasting Services; Blythe, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Prescott Valley Radio Broadcasting Company, Inc., substitutes FM Channel 247B for Channel 239B at Blythe, California. Channel 247B can be allotted at Blythe, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 33–37–02 NL and 114–35–20 WL, with a site restriction of 1.0 km (.61 miles) northeast of the community. The Government of Mexico has conveyed its concurrence in the

allotment of FM Channel 247B at Blythe, California. Concurrently with release of the Report and Order, petitioner's minor change application for FM Station KPKR (File No. BPH–20080418AAU) was granted, contingent on the receipt of Mexican concurrence in the operation of FM Channel 239C3 at Parker, Arizona. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–151, adopted August 12, 2010, and released August 16, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Deborah A. Dupont,

Senior Counsel, Allocations, Audio Division, Media Bureau.

Final Rules

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 239B and adding Channel 247B at Blythe.

[FR Doc. 2010–21560 Filed 8–27–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2010–0040; 91200–1231–9BPP–L2]

RIN 1018–AX06

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2010–11 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule takes effect on August 30, 2010.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia, or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2010

On May 13, 2010, we published in the **Federal Register** (75 FR 27144) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2010–11 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the May 13 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we omit those items requiring no attention, and remaining numbered items might be discontinuous or appear incomplete.

On June 10, 2010, we published in the **Federal Register** (75 FR 32872) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 10 supplement also provided information on the 2010–11 regulatory schedule and announced the Service Regulations Committee (SRC) and summer Flyway Council meetings.

On June 23 and 24, 2010, we held open meetings with the Flyway Council Consultants where the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2010–11 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2010–11 regular waterfowl seasons.

On July 29, 2010, we published in the **Federal Register** (75 FR 44856) a third document specifically dealing with the proposed frameworks for early-season regulations. We published the proposed frameworks for late-season regulations (primarily hunting seasons that start after October 1 and most waterfowl seasons not already established) in an August 25, 2010, **Federal Register.**

This document is the fifth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2010–11 season. These selections will be published in the **Federal Register** as

amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the May 13 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. We have considered all pertinent comments received. Comments are summarized below and numbered in the order used in the May 13 proposed rule. We have included only the numbered items pertaining to early-season issues for which we received comments. Consequently, the issues do not follow in successive numerical or alphabetical order. We received recommendations from all Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume Council support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes are summarized below.

General

Written Comments: Several individual commenters protested the entire migratory bird hunting regulations process, the killing of all migratory birds, the Flyway Council process and the abbreviated public comment periods associated with these rules.

The Animal Legal Defense Fund (ALDF) urged us to reduce bag limits and institute a hunting moratorium for those species potentially affected by the Deepwater Horizon oil spill.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

Regarding the use of abbreviated public comment periods for these rules, the rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published in May, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. Any delays in either extending public comment periods or in the effective date of these regulations after this final rulemaking would seriously compromise the States abilities to implement these decisions. States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Regarding the Deepwater Horizon oil spill, the release of oil into the Gulf of Mexico following the explosion and sinking of the Deepwater Horizon mobile offshore drilling unit and impacts to Gulf wetlands and wildlife has led to concerns about the potential for increased mortality in waterfowl and other migratory game birds, particularly in the fall and winter when local populations increase. This potential for increased mortality of migrating and wintering game birds has led to further questions regarding the need to impose precautionary regulatory restrictions in anticipation of increased spill-related mortality. However, it is important to remember that waterfowl migration and habitat use are highly variable from year to year, not only at the Flyway level but at regional and local levels, and dependent on any number of environmental factors. It is also important to recognize that populations of many species of North American waterfowl naturally undergo large population fluctuations in response to variability in breeding habitat conditions across their range, especially within the important prairie-parkland region. In fact, during the drought-stricken years of the 1980s and early 1990s, many North American waterfowl species declined to population sizes less than one-half those recently experienced as a result of natural declines in productivity and ongoing mortality.

Fortunately, waterfowl management has a rich and successful history of monitoring and assessment programs which provide annual updates on the status and health of waterfowl populations. Programs such as the May aerial breeding population survey, the continental bird banding program, the mid-winter waterfowl surveys, and the hunter harvest surveys, among others, all provide important pieces of information on the population status, productivity, and distribution of important waterfowl species. These data are integral in the process of establishing hunting regulations for waterfowl and other migratory game birds. Through the Adaptive Harvest Management process we currently utilize to establish waterfowl seasons, and other associated species-specific harvest strategies, monitoring and assessment data are explicitly linked to regulatory decision making, ensuring that appropriate regulatory actions will be taken if warranted by changes in continental population status. Therefore, from both a National and Flyway harvest-management perspective, we intend to respond to the Deepwater Horizon oil spill as we would any other non-hunting factor with potentially substantial effects on mortality or reproduction (e.g., hurricane, disease, prairie drought, habitat loss), by monitoring abundance and vital rates of waterfowl and other migratory game birds and adjusting harvest regulations as needed on the basis of existing harvest strategies. We believe this is the most prudent course of action, and further, firmly believe that our existing monitoring and assessment programs are sufficient to help safeguard the long-term conservation of any potentially-affected waterfowl or other migratory game birds.

Recently obtained results of annual spring waterfowl population surveys indicate that population sizes of most duck species and breeding habitat conditions are good this year. While we believe that regulatory restrictions are currently unnecessary, we remain very concerned about both the short and long-term impacts of the oil spill on migratory birds, their habitats, and the resources upon which birds depend. There remains considerable uncertainty regarding the short-term and long-term impacts this spill will have on waterfowl and other migratory game birds that utilize the impacted region during all or part of their annual life cycle. We have been heavily engaged in the immediate response to the BP oil

spill. The intent of these efforts is to document and minimize impacts to natural resources including migratory birds and their habitats. Large-scale efforts to influence bird migration and distribution at the flyway-level are likely fruitless given the importance of weather and photoperiod on the timing and speed of bird migrations. It is possible that re-distribution of birds at smaller scales could help reduce some oil exposure. Working with conservation partners, we are preparing to implement a range of on-the-ground habitat conservation or management measures near the oil-impact area intended to minimize the entrance of oil into managed habitats along the Gulf and to enhance the availability of food resources outside the oil impact area. The provision of additional, reliable food sources could also help buffer against the worst-case scenario of an early winter in northern portions of the Mississippi and Central Flyways and dry habitat conditions in the northern Mississippi Alluvial Valley that would result in large wintering waterfowl populations along the Gulf Coast. We are working with partners to determine what portion of these projects should be available as "sanctuary" (areas closed to hunting) to encourage bird use of these areas and minimize redistribution due to disturbance.

Simultaneous with immediate response efforts, we are also working with partners to assess potential pathways for long-term acute and sub-lethal effects of the BP oil spill on the full suite of migratory birds utilizing Gulf (or other impacted) habitats during some portion of their life cycle. Effects may result from direct exposure of birds to oil or to the long-term accumulation of polycyclic aromatic hydrocarbons or other toxins at levels sufficient to cause physiological disorders impacting productivity or survival. The intent of this assessment is to assist in identifying potential mitigation and conservation measures as well as long-term monitoring and assessment needs for migratory birds.

Regardless of the eventual impact of the BP oil spill on migratory game birds, we recognize the importance of working with the States as well as other governmental and non-governmental conservation partners to ensure that reasonable and science-based measures are implemented in the face of the ongoing crisis in the Gulf, and that the rationale for decisions regarding harvest regulations or other actions are clearly communicated to the public. We will continue to do so.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

i. Special Teal Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service explore options for providing production States an opportunity to harvest teal outside the regular duck season frameworks as part of the teal season assessment that is currently being conducted.

Service Response: Last year, we noted that an assessment of the cumulative effects of all teal harvest, including harvest during special September seasons, had never been conducted. As such, we committed to a thorough assessment of the harvest potential for both blue-winged and green-winged teal, as well as an assessment of the impacts of current special September seasons on these two species. We requested that the Atlantic, Mississippi, and Central Flyway Councils designate representatives to assist Service staff with the technical aspects of these assessments. Our goal is to complete this important assessment work within 3 years.

The Mississippi Flyway Council's request to include an assessment of potential teal harvest opportunities for production States in the ongoing teal assessment, and the additional work associated with this request, would likely delay the completion of our original task. As we noted above, the original purpose of this assessment was to assess the harvest potential of the three teal species. The Council's request would entail not only an evaluation of the potential effects of production States' teal harvest on those species, but the possibility of impacts to nontarget species as well. However, we understand the production States' concern about teal harvest opportunities. Therefore, we will compile information and analyses from historic reports that address teal seasons and, particularly, issues related to duck harvests from production and non-production States, and provide them to the Flyways for consideration during the upcoming winter flyway meetings. The intent of this review would be to summarize historical analyses and dialogue regarding the issue of early-season teal harvest opportunities in production States and provide a common understanding of the issues that would have to be reconsidered to fully address the Mississippi Flyway Council's recommendation. With this information, the Flyways could more fully assess how they may want to approach teal harvest opportunities for their States in the future, following completion of the current teal assessment.

Regarding the regulations for this year, utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 6.3 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2010.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the closing date for the September Canada goose season in Minnesota be September 22 Statewide.

The Central Flyway Council recommended that we increase the daily bag limit framework from 5 to 8 for the Central Flyway States of South Dakota, Nebraska, Kansas, and Oklahoma during the Special Early Canada Goose hunting season.

Service Response: We agree with the Mississippi Flyway Council's recommendation to extend Minnesota's framework closing date for their September Canada goose season to September 22. In 2007, Minnesota began a 3-year experiment to assess the proportion of migrant geese harvested during September 16–22 in the Northwest Goose Zone. The remainder of Minnesota already has an operational September goose season that extends from September 1 through 22. Results from the 3-year experimental season evaluation showed that migrant geese comprised 7 percent of the Canada goose harvest in the Northwest Goose Zone during September 16–22, below the 10 percent threshold level established by the Service for allowing special early Canada goose seasons. This result is consistent with the proportion of migrant geese harvested in other areas of Minnesota (< 5 percent) during September 16–22. Further, goose harvest (an average of 1,369 additional geese) in the Northwest Goose Zone during the experimental season extension

(September 16–22) represents 1.5 percent of the total Statewide September season goose harvest. We note that the Minnesota giant Canada goose population remains at high levels throughout the State with spring breeding population estimates averaging 313,425 over the past 5 years. Thus, we concur with the Council that the season extension in the Northwest Goose Zone meets our special September Canada goose season criteria; allows for uniform, Statewide season dates in Minnesota (September 1–22) in order to simplify current hunting regulations; and appears to have negligible impacts on migrant Canada geese.

We also agree with the Central Flyway Council's request to increase the Canada goose daily bag limit in South Dakota, Nebraska, Kansas, and Oklahoma. The Special Early Canada Goose hunting season is generally designed to reduce or control overabundant resident Canada geese populations. Increasing the daily bag limit from 5 to 8 may help these States reduce or control existing high populations of resident Canada geese.

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2010.

Service Response: We concur. Michigan, beginning in 1998, and Wisconsin, beginning in 1989, have opened their regular Canada goose seasons prior to the Flyway-wide framework opening date to address resident goose management concerns in these States. As we have previously stated (73 FR 50678, August 27, 2008), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually.

9. Sandhill Cranes

Council Recommendations: The Mississippi, Central, and Pacific Flyway Councils recommended a sandhill crane hunting season for mid-continent sandhill cranes in northwest Minnesota in 2010, following guidelines outlined in the 2006 Cooperative Management Plan for the Mid-Continent Population (MCP) of sandhill cranes.

The Central and Pacific Flyway Councils recommend using the 2010 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,979 birds as proposed in the allocation formula using the 2007–09 3-year running average.

The Pacific Flyway Council recommended initiating a limited hunt for Lower Colorado River Valley Population (LCRVP) of sandhill cranes in Arizona with a goal of a limited harvest of 9 cranes during the 2010–11 hunting season. Arizona will issue permits to hunters and require mandatory check-in of all harvested cranes. The Service previously approved the hunt in 2007.

Service Response: In 2006, the Management Plan for MCP sandhill cranes was revised and endorsed by the Central, Mississippi, and Pacific Flyway Councils. Guidelines in the Plan recommended that the MCP continue to be managed as a single population and management at a smaller scale (*i.e.,* breeding affiliation or subpopulation level) was not warranted at that time. We note that the Plan clearly recognized sandhill cranes breeding and staging in NW Minnesota as part of the mid-continent population. Further, the current population index for MCP cranes was 498,400 in 2009, above the current population objective range of 349,000–472,000 cranes. As the proposed new hunt in northwest Minnesota would conform to guidelines from the Management Plan and sandhill crane hunting frameworks to be established for MCP cranes in the Mississippi Flyway, we agree with the Councils' recommendations to establish this new season. Based on sandhill crane hunter numbers and harvest in other States in the Central Flyway, the small size of the hunting zone proposed in Minnesota, and the low hunter density in this region of Minnesota, we expect hunter numbers and crane harvest to be relatively low (< 500 of each).

We also agree with the Councils' recommendations on the RMP sandhill crane harvest allocation of 1,939 birds for the 2010–11 season, as outlined in the RMP sandhill crane management plan's harvest allocation formula. The objective for the RMP sandhill crane is to manage for a stable population index of 17,000–21,000 cranes determined by an average of the three most recent, reliable September (fall pre-migration) surveys. While this year's survey counted 20,321 birds, a decrease from the previous year's count of 21,156 birds, the 3-year average for the RMP sandhill crane fall index is 21,433.

Regarding the proposed limited hunt for LCRVP cranes in the Arizona hunt, in 2007, the Pacific Flyway Council recommended, and we approved, the establishment of a limited hunt for the LCRVP sandhill cranes in Arizona (72 FR 49622, August 28, 2007). However, the population inventory on which the LCRVP hunt plan is based was not completed that year. Thus, the Arizona Game and Fish Department chose to not conduct the hunt in 2007 and sought approval from the Service again in 2008 to begin conducting the hunt. We again approved the limited hunt (73 FR 50678, August 27, 2008). However, due to complications encountered with the proposed onset of this new season falling within ongoing efforts to open new hunting seasons on federal National Wildlife Refuges, the experimental limited hunt season was not opened in 2008. As such, last year the State of Arizona requested that 2009–12 be designated as the new experimental season and designated an area under State control where the experimental hunt will be conducted. Given that the LCRVP survey results indicate an increase from 1,900 birds in 1998 to 2,264 birds in 2009, and that the 3-year average of 2,847 LCRVP cranes is above the population objective of 2,500, we continue to support the establishment of the 3-year experimental framework for this hunt, conditional on successful monitoring being conducted as called for in the Flyway hunt plan for this population. Our final environmental assessment (FEA) on this new hunt can be obtained by writing Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird management, 911 NE 11th Avenue, Portland, OR 97232–4181, or it may be viewed at *http://www.regulations.gov* at Docket No. *FWS*–R9–MB–2010–0040 or via the Service's home page at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BirdManagement.html.*

14. Woodcock

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended adoption of the Interim American Woodcock Harvest Strategy for implementation in the 2011–12 hunting season.

The Central Flyway Council recommended that the interim harvest strategy outlined in the Draft American Woodcock Harvest Strategy be implemented for a period of 5 years (2011–15).

Written Comments: The Wisconsin Department of Natural Resources supported the interim woodcock harvest strategy.

Service Response: In 2008, we completed a review of available woodcock population databases to assess their utility for developing a woodcock harvest strategy.

Concurrently, we requested that the Atlantic, Mississippi, and Central Flyway Councils appoint members to a working group to cooperate with us on developing a woodcock harvest strategy. In February 2010, the working group completed a draft interim harvest strategy for consideration by the Flyway Councils at their March 2010 meetings.

The working group's draft interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. While the strategy's objective is to set woodcock harvest at a level commensurate with population, data limitations preclude accurately assessing harvest potential at this time. Thus, the strategy's thresholds for changing regulations are based on the premise that further population declines would result in decreased harvest, while population increases would allow for additional harvest. The working group recommended that the interim harvest strategy be implemented for the 2011–12 hunting season, that the Service and Flyway Councils evaluate the strategy after 5 years, and that we continue to assess the feasibility of developing a derived harvest strategy.

In the May 13 **Federal Register**, we stated that following review and comment by the Flyway Councils, we would announce our intentions whether to propose the draft strategy. Given the unanimous Flyway Council approval of the working group's draft interim harvest strategy, we concurred with the three Flyway Councils and proposed adoption of the strategy in the July 29 **Federal Register** beginning in the 2011–12 hunting season for a period of 5 years (2011–15). Based on public comment, we see no reason not to formally complete the adoption of the new interim harvest strategy. Thus, we plan to implement the strategy beginning with the 2011–12 hunting season. Specifics of the interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the "moderate" season framework for States within the Eastern Management Unit population of mourning doves resulting in a 70-day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or "moderate") season package of a 15-bird daily bag limit and a 70-day season for the 2010–11 mourning dove season in the States within the Central Management Unit.

The Pacific Flyway Council recommended use of the "moderate" season framework for States in the Western Management Unit (WMU) population of mourning doves, which represents no change from last year's frameworks.

Service Response: In 2008, we accepted and endorsed the interim harvest strategies for the Central, Eastern, and Western Management Units (73 FR 50678, August 27, 2008). As we stated then, the interim mourning dove harvest strategies are a step towards implementing the Mourning Dove National Strategic Harvest Plan (Plan) that was approved by all four Flyway Councils in 2003. The Plan represents a new, more informed means of decision-making for dove harvest management besides relying solely on traditional roadside counts of mourning doves as indicators of population trend. However, recognizing that a more comprehensive, national approach would take time to develop, we requested the development of interim harvest strategies, by management unit, until the elements of the Plan can be fully implemented. In 2004, each management unit submitted its respective strategy, but the strategies used different datasets and different approaches or methods. After initial submittal and review in 2006, we requested that the strategies be revised, using similar, existing datasets among the management units along with similar decision-making criteria. In January 2008, we recommended that, following approval by the respective Flyway Councils in March, they be submitted in 2008 for endorsement by the Service, with implementation for the 2009–10 hunting season. Last year, for the first time, the interim harvest strategies were successfully employed and implemented in all three Management Units (74 FR 36870, July 24, 2009). This year, based on the interim harvest strategies and current population status, we agree with the recommended selection of the "moderate" season frameworks for doves in the Eastern, Central, and Western Management Units.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available by either writing to the address indicated under **ADDRESSES** or by viewing on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) Whether the rule will create inconsistencies with other Federal agencies' actions; (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; and (d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in **Regulatory Flexibility Act** section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. At this time, we are proposing no changes to the season frameworks for the 2010–11 season, and as such, we will again consider these three alternatives. However, final frameworks will depend on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. *FWS*–R9–MB–2010–0040.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. *FWS*–R9–MB–2010–0040.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013). A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the May 13 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-

reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season. The resulting proposals were contained in a separate proposed rule (75 FR 47682). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2010–11 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2010–11 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742a–j.

Dated: August 18, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2010–11 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2010, and March 10, 2011.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units:

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is

prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi, and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 18). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone only), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Experimental Seasons

Canada goose seasons of up to 10 days during September 16–25 may be selected in Delaware. The daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota, where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if

all other waterfowl seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese, except in Kansas, Nebraska, Oklahoma, and South Dakota, where the bag limit may not exceed 8 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW Goose Management Zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2, and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese during the period September 1–15. This season is subject to the following conditions:

A. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

B. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Mississippi Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: A season not to exceed 37 consecutive days may be selected in the designated portion of northwestern Minnesota (Northwest Goose Zone).

Daily Bag Limit: 2 sandhill cranes.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

A. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

B. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

C. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

D. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Special Seasons in the Pacific Flyway:

Arizona may select a season for hunting sandhill cranes within the range of the Lower Colorado River Population (LCR) of sandhill cranes, subject to the following conditions:

Outside Dates: Between December 1 and January 31.

Hunting Seasons: The season may not exceed 3 days.

Bag limits: Not to exceed 1 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: The season is experimental. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Pacific Flyway Council.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 30) in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 30) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the 2 species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 25) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons:

States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 17), but not earlier than September 17, and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Oregon, and Washington—Not more than 30 consecutive days, with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days, with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days, with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit: The daily bag limit may not exceed 15 mourning and white-winged doves in the aggregate.

Central Management Unit:

In Texas, the daily bag limit may not exceed 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 15 mourning and white-winged doves in the aggregate.

Western Management Unit:

Arizona may select a hunting season of not more than 30 consecutive days,

running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

A. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

B. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

C. In Units 6–B, 6–C and on Hinchinbrook and Hawkins Islands in Unit 6–D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose (as defined above) harvest reaches 40.

D. In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A–C), 10 (Unimak Island portion), and 17.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

A. All seasons are by registration permit only.

B. All season framework dates are September 1–October 31.

C. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

D. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

E. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swans per permit. No more than 1 permit may be issued per hunter per season.

F. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves or pigeons.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29. Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Oklahoma

North Zone—That portion of the State north of a line extending east from the Texas border along U.S. Highway 62 to Interstate 44, east along Oklahoma State Highway 7 to U.S. Highway 81, then south along U.S. Highway 81 to the Texas border at the Red River.

Southwest Zone—The remainder of Oklahoma.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas–Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to FM 649 in Randado; south on FM 649 to FM 2686; east on FM 2686 to FM 1017; southeast on FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—The remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—The remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.–Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Eastern Long Island Goose Area (NAP High Harvest Area)—That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area)—That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area)—That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to US 17 in Midway, US 17 in Midway to US 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of US 158 and east of NC 35.

Pennsylvania

Southern James Bay Population (SJBP) Zone—The area north of I–80 and west of I–79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone—That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone—The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area—Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone—That portion of the State outside the Northeast Canada Goose Zone and north of a line extending west from the Indiana border along Peotone–Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington–Peotone Road, west along Wilmington–Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff–Lorenzo Road, west along Pine Bluff–Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–

39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone—That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone—The remainder of Illinois.

Iowa

North Zone—That portion of the State north of U.S. Highway 20.

South Zone—The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone—Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn–Benton County line to the point of beginning.

Des Moines Goose Zone—Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street; then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone—Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to County Road C66, then east along County Road C66 to the point of beginning.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; then west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; then north along the east boundary of Dahlgren Township to U.S. Highway 212; then west along U.S. Highway 212 to State Trunk Highway (STH) 284; then north on STH 284 to County State Aid Highway (CSAH) 10; then north and west on CSAH 10 to CSAH 30; then north and west on CSAH 30 to STH 25; then east and north on STH 25 to CSAH 10; then north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; then east on CSAH 2 to U.S. Highway 61; then south on U.S. Highway 61 to State Trunk Highway (STH) 97; then east on STH 97 to the intersection of STH 97 and STH 95; then due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2

in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; then along the U.S. Highway 52 to State Trunk Highway (STH) 57; then along STH 57 to the municipal boundary of Kasson; then along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; then along CSAH 13 to STH 30; then along STH 30 to U.S. Highway 63; then along U.S. Highway 63 to the south boundary of the State; then along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; then along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to I–94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska–Iowa State line west on U.S. Highway 30 to US Highway 81, then south on US Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska–Iowa State line.

North Dakota

Missouri River Canada Goose Zone—The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to US Hwy 83; then south on US Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to US Hwy 83; then south on US Hwy 83 to I–94; then east on I–94 to US Hwy 83; then south on US Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit—Entire State of South Dakota *except* the Counties of Bennett, Gregory, Hughes, Lyman, Perkins, and Stanley; that portion of Potter County west of US Highway 83; that portion of Bon Homme, Brule, Buffalo, Charles Mix, and Hyde County south and west of a line beginning at the Hughes–Hyde County line of SD Highway 34, east to Lees Boulevard, southeast to SD 34, east 7 miles to 350th Avenue, south to I–90, south and east on SD Highway 50 to Geddes, east on 285th Street to US Highway 281, south on US Highway 281 to SD 50, east and south on SD 50 to the Bon Homme–Yankton County boundary; that portion of Fall River County east of SD Highway 71 and US Highway 385; that portion of Custer County east of SD Highway 79 and south of French Creek; that portion of Dewey County south of BIA Road 8, BIA Road 9, and the section of US 212 east of BIA Road 8 junction.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of

Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Maryland

Special Teal Season Area—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone—That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone—That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone—That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone—That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone—The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area—Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone—That portion of the State west of U.S. 283.

Low Plains Early Zone—That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone—The remainder of Kansas.

Nebraska

Special Teal Season Area—That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone—That portion of the State north of I–40 and U.S. 54.

South Zone—The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone—In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California–Nevada State line; north along the California–Nevada State line to the junction of the California–Nevada–Oregon State lines west along the California–Oregon State line to the point of origin.

Colorado River Zone—Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino–Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army–Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe–Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade–Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone—That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone—All of Kings and Tulare Counties and that portion of

Kern County north of the Southern Zone.

Balance-of-the-State Zone—The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

Mississippi Valley Population (MVP)–Upper Peninsula Zone—The MVP–Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP–Lower Peninsula Zone—The MVP–Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch County, north continuing along the western border of Branch and Calhoun Counties to the northwest corner of Calhoun County, then east to the southwest corner of Eaton County, then north to the southern border of Ionia County, then east to the southwest corner of Clinton County, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm Counties to the southern border of Isabella county, then east to the southwest corner of Midland County, then north along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to I–75/U.S. 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone—The rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Mississippi Flyway

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana—The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma—That portion of the State west of I–35.

South Dakota—That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line, then south along the Texas–Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas–Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and

east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, and those portions of Johnson County east of Interstates 25 and 90 and Sheridan County east of Interstate 90.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

LCRV Crane Hunt Area (Gillespie Dam Hunt Area in Unit 39)—That portion of the Gila River corridor in Unit 39 south of Gillespie Dam and north of Gila Bend located within the following townships and ranges: T2S R4W, T2S R5W, T3S R4W, T3S R5W, T4S R4W, and T5S R4W.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah–Idaho State line at the Box Elder–Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder–Weber County line; east on the Box Elder–Weber County line to the Box Elder–Cache County line; north on the Box Elder–Cache County line to the Utah–Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area—That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 2010–21375 Filed 8–27–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0908191244–91427ndash;02]

RIN 0648–XY35

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Massachusetts

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2010 summer flounder commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2010, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, September 1, 2010, through 2400 hours, December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist,(978) 281–9257.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2010 calendar

year was set equal to 13,278,001 lb (6,023 mt) (74 FR 67978, December 22, 2009). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 905,621 lb (411 mt). The 2010 allocation was reduced to 846,667 lb (384 mt) after deduction of research set-aside and adjustment for 2009 quota overages.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2010.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, September 1, 2010, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2010 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 1, 2010, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–21531 Filed 8–25–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XY57

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2010 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 27, 2010, through 1200 hrs, A.l.t., October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2010 TAC of pollock in Statistical Area 630 of the GOA is 5,912 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 1,056 mt, to reflect the total amount of pollock TAC that has been caught prior to the C season in Statistical Area 630. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 630 is 4,856 mt (5,912 mt minus 1,056 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2010 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,846 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 24, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–21528 Filed 8–25–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 167
Monday, August 30, 2010

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0013]

RIN 1904–AB95

Energy Conservation Program for Consumer Products: Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: In order to implement recent amendments to the Energy Policy and Conservation Act of 1975 (EPCA), the U.S. Department of Energy (DOE) proposes to amend its test procedures for residential direct heating equipment and pool heaters to provide for measurement of standby mode and off mode power use by these products. Where appropriate, the amendments would incorporate into the DOE test procedures relevant provisions from the International Electrotechnical Commission's (IEC) Standard 62301, "Household electrical appliances—Measurement of standby power" (First Edition 2005–06), as well as language to clarify application of these provisions as they specifically relate to measurement of electrical standby mode and off mode power consumption in direct heating equipment and pool heaters.

This rulemaking also proposes a number of definitions for key terms. DOE has tentatively concluded that no amendments are necessary to the test procedure for residential water heaters to address standby mode and off mode power use, because the existing test procedures for water heaters already fully account for and incorporate the standby mode and off mode energy consumption. In addition, DOE announces a public meeting to discuss and receive comments on the issues presented in this notice.

DATES: DOE will hold a public meeting Friday, September 24, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Friday, September 10, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Friday, September 3, 2010.

DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than November 15, 2010. See section V, "Public Participation," of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the public meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures.)

Any comments submitted must identify the NOPR on Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters, and provide the docket number EERE–2009–BT–TP–0013 and/or Regulatory Information Number (RIN) 1904–AB95. Comments may be submitted using any of the following methods:

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

2. *E-mail: EISA-Heat-Equip-2010-TP-0013@ee.doe.gov.* Include docket number EERE–2009–BT–TP–0013 and/or RIN 1904–AB95 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, "Public Participation," of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* "EPCA" or, in context, "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles," including residential water heaters, direct heating equipment, and pool heaters (all of which are referred to below as "covered products").[1] (42 U.S.C. 6291(1)–(2) and 6292(a)(4), (9) and (11))

Under the Act, the overall program consists essentially of three parts: (1) Testing; (2) labeling; and (3) Federal energy conservation standards. The testing requirements consist of test procedures, prescribed under EPCA, that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted under EPCA and for representations about the energy consumption or energy efficiency of those products. Similarly, DOE must use these test procedures whenever testing is required in an enforcement action to determine whether the products comply with energy conservation standards adopted pursuant to EPCA.

Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. EPCA provides that any test procedures prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments thereon. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

DOE's test procedures for residential water heaters are found in the Code of Federal Regulations (CFR) at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E. The test procedures include provisions for determining the energy efficiency (energy factor (EF)), as well as the annual energy consumption of these products.

The direct heating equipment covered product (not including furnaces) is referred to as "home heating equipment" in CFR. Unlike central heating furnaces, direct heating equipment is a covered product which is designed to furnish warmed air to the living space of a residence, directly from the device, without duct connections. There are separate test procedures for the two classes of home heating equipment, specifically 10 CFR 430.23(g) and 10 CFR part 430, subpart B, appendix G for unvented home heating equipment, and 10 CFR 430.23(o) and 10 CFR part 430, subpart B, appendix O for vented home heating equipment. Taken together, these two classes of home heating equipment represent "direct heating equipment," the covered product listed at 42 U.S.C. 6292(a)(9). (Hereafter in this notice, the terms "vented heater" and "unvented heater" are used to describe the two types of direct heating equipment.) The vented heater test procedures include provisions for determining energy efficiency (annual fuel utilization efficiency (AFUE)), as well as annual energy consumption. The unvented heater test procedures currently have no provisions for determining energy efficiency; however, for unvented heaters that are the primary heating source for the home, there is a calculation of annual energy consumption based on a single assignment of active mode hours. For unvented heaters that are not the primary heating source for the home, there are no calculation provisions for efficiency or annual energy consumption.

DOE's test procedures for pool heaters are found at 10 CFR 430.23(p) and 10 CFR part 430, subpart B, appendix P. The test procedures include provisions for determining two energy efficiency descriptors (*i.e.,* thermal efficiency and pool heater heating seasonal efficiency), as well as annual energy consumption.

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measurement of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of "active mode," "standby mode," and "off mode" (42 U.S.C. 6295(gg)(1)(A)); however, the statute permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The legislation requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—(i) the current test procedures for a covered product already fully account for and incorporate the standby and off mode energy consumption of the covered product; or (ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode

[1] All references to EPCA refer to the statute as amended, including through the Energy Independence and Security Act of 2007, Public Law 110–140.

energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)).

Under the statutory provisions introduced by EISA 2007, any such amendment must consider the most current versions of International Electrotechnical Commission (IEC) Standard 62301, "Household electrical appliances—Measurement of standby power" (First Edition 2005–06) and IEC Standard 62087, "Methods of measurement for the power consumption of audio, video, and related equipment" (Second Edition, 2008–09).[2] *Id.* Further, section 310 of EISA 2007 provides that any final rule establishing or revising energy conservation standards adopted on or after July 1, 2010, must incorporate standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)(A)).

Accordingly, pursuant to section 310 of EISA 2007, DOE's residential water heater, direct heating equipment, and pool heater test procedures must account for standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)) DOE test procedures are needed that account for standby mode and off mode energy use (to the extent those operational modes apply to the products in question), in order to permit manufacturers to measure and certify compliance with future amended energy conservation standards that address those modes for the products that are the subject of this rulemaking. If finalized, today's proposal would also provide DOE a means for determining compliance with any future standards adopted for these products that include standby mode and off mode energy consumption.

II. Summary of the Proposal

In today's NOPR, DOE has tentatively concluded that for residential water heaters, there is no need to amend the test procedures pursuant to EISA 2007. Specifically, because the current test procedures for residential water heaters already fully account for and incorporate standby mode energy consumption, and because off mode is not applicable to water heaters, no amendment is required. (42 U.S.C. 6295(gg)(2)(A)(i)) A more complete discussion is provided below in section III.A.

For direct heating equipment and pool heaters, DOE is proposing to amend the test procedures in order to: (1) Address the statutory requirement to expand test procedures to incorporate measurement of standby mode and off mode power consumption; and (2) provide a foundation for DOE to develop, implement, and ensure compliance with amended energy conservation standards in the future that address the energy use of these products when in standby mode and off mode.

In addition to these statutory requirements for amended test procedures, EISA 2007 has three separate provisions regarding the inclusion of standby mode and off mode energy use in any energy conservation standard, which have bearing on the current test procedures rulemaking. First, test procedure amendments to include standby mode and off mode energy consumption shall not be used to determine compliance with standards established prior to the adoption of such test procedure amendments. (42 U.S.C. 6295(gg)(2)(C)) Second, standby mode and off mode energy use must be included into a single amended or new standard for a covered product adopted in a final rule after July 1, 2010. Finally, a separate standard for standby mode and off mode energy consumption is required if a single amended or new standard is not feasible. (42 U.S.C. 6295(gg)(3)(B))

In order to accommodate the above-mentioned first provision, DOE clarifies that today's proposed amended test procedures would not alter the measures of energy efficiency used in existing energy conservation standards; therefore, this proposal would not affect a manufacturer's ability to demonstrate compliance with previously-established standards. These amended test procedures would become effective, in terms of adoption into the CFR, 30 days after the date of publication in the **Federal Register** of the final rule in this test procedures rulemaking. However, DOE is proposing added language to the regulations codified in the CFR that would state that any added procedures and calculations for standby mode and off mode energy consumption resulting from implementation of the relevant provisions of EISA 2007 need not be performed at this time to determine compliance with the current energy conservation standards. Subsequently, and consistent with the second provision above, manufacturers would be required to use the amended test procedures' standby mode and off mode provisions to demonstrate compliance with DOE's energy conservation standards on the compliance date of a final rule establishing amended energy conservation standards for these products that address standby mode and off mode energy consumption, at which time the limiting statement in the DOE test procedure would be removed. Further clarification would also be provided that as of 180 days after publication of a test procedure final rule, any representations as to the standby mode and off mode energy consumption of the products that are the subject of this rulemaking would need to be based upon results generated under the applicable provisions of this test procedure. (42 U.S.C. 6293(c)(2))

On November 24, 2006, DOE published a notice in the **Federal Register** announcing the availability of and seeking comment on a framework document to initiate rulemaking to consider amended energy conservation standards for residential water heaters, direct heating equipment, and pool heaters (hereafter the November 2006 Framework Document). 71 FR 67825. The issuance of a framework document is the first step in conducting an appliance standards rulemaking.

The November 2006 Framework Document was issued before the enactment of EISA 2007, and consequently, it did not address the possible amendments to the test procedure associated with the EISA 2007 legislative charge (*i.e.,* the standby mode and off mode provisions in 42 U.S.C. 6295(gg)(3)) DOE issued its final rule revising energy conservation standards for residential water heaters, direct heating equipment, and pool heaters on March 31, 2010, which was published in the **Federal Register** on April 16, 2010. 75 FR 20112. Because publication of this final rule amending the energy conservation standards for these products was required to be completed before July 1, 2010 (the date after which any final rule establishing or revising a standard must incorporate standby mode and off mode energy use), this standards final rule did not necessarily need to incorporate standby mode and off mode energy use. Nonetheless, today's proposal for amended test procedures will allow consideration of the standby mode and off mode energy use of these products in a subsequent standards rulemaking (*e.g.,* standards adopted after July 1, 2010).

As currently drafted, three of the test procedures for the products at issue in this rulemaking would require amendment to account for standby mode and off mode energy use as required by EISA 2007. Specifically, the test procedure for vented heaters would need added measurement and calculation provisions to integrate electrical standby mode and off mode energy use into the overall energy consumption equations. Fossil-fuel standby mode and off mode energy use is already integrated into the vented

[2] IEC standards are available for purchase at: *http://www.iec.ch.*

heater test procedure (see section III.B.1 below). Test procedures for unvented heaters would need added measurement provisions of standby power (fossil-fuel and electrical). However, for the reasons explained in section III.C below, no added calculations or new energy efficiency descriptors are offered in today's proposal for unvented heaters. Pool heater test procedures would need added measurement and calculation provisions for both electric and fossil-fuel standby mode and off mode energy use. Such energy use would need to be incorporated into both the overall energy consumption equations. As noted above, the test procedures for residential water heaters would not need amendment, because standby mode energy use is fully integrated into the existing test procedure, and off mode is not applicable for residential water heaters.

In amending the current test procedures for residential direct heating equipment and pool heaters, DOE proposes to incorporate by reference IEC Standard 62301, "Household electrical appliances—measurement of standby power" (First Edition, 2005–06), regarding test conditions and test procedures for measuring standby mode and off mode energy consumption. DOE also proposes to incorporate product-specific definitions of "active mode," "standby mode," and "off mode" that are consistent with the guidance set forth under 42 U.S.C. 6295(gg)(1)(A). Further, DOE proposes to include in each test procedure additional language that would clarify the application of IEC Standard 62301 for measuring standby mode and off mode power consumption.[3]

III. Discussion

A. Determination Not To Amend Test Procedures for Residential Water Heaters

As noted above, DOE's test procedures for residential water heaters are found at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E. These test procedures include provisions for determining the energy factor (EF) as well as the annual energy consumption of those products. As written, the test procedures include a full year accounting of energy use, both electricity and fossil fuel as applicable to a given unit. The following explains generally how water heater energy consumption is determined under the DOE test procedure. Specific measurements are required to determine the water heater's energy performance in providing a representative daily amount of hot water. The measurements are used to calculate two separate performance metrics: (1) Recovery efficiency, and (2) standby loss. Further calculations provide for a comprehensive efficiency descriptor (EF) which represents the overall efficiency of the water heater in providing the representative daily amount of hot water. Annual energy consumption and cost are estimated by extending this daily performance measured by EF to a full year (*i.e.,* 365 days).

There are some non-substantive differences in terms of the terminology used in the existing residential water heater test procedures as compared to what is used in EISA 2007. For example, the test procedure's standby loss is expressed as either an hourly standby loss or a heat loss coefficient, and while not identical, it can be equated to EISA 2007's "standby mode" energy use. In addition, the EISA 2007 definition of "off mode" appears inapposite to water heater operation. Water heaters are assumed to operate all year either actively heating water or incurring energy consumption (loss) in standby mode. There is no other mode of energy consumption conceivable for these products. Accordingly, to the extent those terms apply, DOE believes the full-year accounting of energy use as currently presented in the DOE water heater test procedure fully accounts for measurement of active mode, standby mode, and off mode energy consumption, as required by EISA 2007. Similarly, the water heater test procedure's efficiency descriptor Energy Factor is a complete accounting of all energy consumption possible for a residential water heater.

In consideration of the above, DOE has tentatively concluded that the current test procedures for water heaters already fully account for and incorporate measurement of standby mode and off mode energy consumption, as required by EISA 2007. (42 U.S.C. 6295(gg)(2)(A)(i))

B. Proposed Test Procedure Amendments for Vented Heaters

As discussed above, EISA 2007 requires amendment of DOE's test procedures for direct heating equipment to account for standby mode and off mode energy consumption. This section discusses amendments for the test procedure provisions for vented heaters, and section III.C addresses test procedure amendments for unvented heaters. Specifically, the vented heater test procedures require additional measurement and calculation provisions in order to account for electrical standby mode and off mode energy use. Fossil-fuel standby mode and off mode energy use is already integrated into the vented heater test procedure.[4]

As a first step in addressing the requirements of EISA 2007, DOE believes the relevant terms and concepts from that statute need clarification as they apply to vented heaters. While EISA 2007 provided definitions and concepts that are generally applicable and workable within the context of the existing vented heater test procedure, some clarifying language is necessary to address the specific characteristics of the products relevant to this rulemaking. The following paragraphs discuss these proposed clarifications.

Section 310(3) of EISA 2007 defines "active mode" as "* * * the condition in which an energy-using product—(I) is connected to a main power source; (II) has been activated; and (III) provides 1 or more main functions." (42 U.S.C. 6295(gg)(1)(A)(i)) This statutory definition of "active mode" is comparable to what is referred to as "on-cycle" in the current vented heater test procedures. 10 CFR part 430, subpart B, appendix O, section 4.0 *Calculations.* On-cycle is the period during the heating season when the vented heater is performing its main function (*i.e.,* heat delivery). The heat delivery process begins with the activation of the burner followed by, or simultaneously with, the activation of circulating fans, and ends with the deactivation of these components. As discussed in section III.B.3 below, the duration of on-cycle can be estimated in the test procedure as burner operating hours (BOH).

Section 310(3) of EISA 2007 defines "standby mode" as "* * * the condition in which an energy-using product—(I) is connected to a main power source; and (II) offers 1 or more of the following user oriented or protective functions: (aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; (bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions." (42 U.S.C.

[3] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedure to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. As explained subsequently in this notice, the narrow scope of this particular IEC Standard reduces its relevance to today's proposal.

[4] Vented heaters can be fueled by natural gas, propane, or oil. For simplicity, the expressions "fossil-fueled" or "fossil-fuel" will be used to include all three fuel types.

6295(gg)(1)(A)(iii)) The statutory definition of "standby mode" is comparable to what is referred to as "off-cycle" in the current vented heater test procedure. 10 CFR part 430, subpart B, appendix O, section 4.0 *Calculations.* The duration of off-cycle would be the total time during the heating season when the vented heater is connected to power sources and not in active mode.

Section 310(3) of EISA 2007 defines "off mode" as "* * * the condition in which an energy-using product—(I) is connected to a main power source; and (II) is not providing any standby or active mode function." (42 U.S.C. 6295(gg)(1)(A)(ii)) For vented heaters, off mode would occur during the non-heating season when the vented heater is connected to power sources but is not activated to provide heat. The statutory definition of "off mode" is comparable to what is referred to as non-heating season in the current vented heaters test procedure. The proposed definitions are located in 10 CFR part 430, subpart B, appendix O, section 4.0 *Calculations.*

DOE believes these proposed definitions provide the clarification necessary to carry out the requirements of EISA 2007 without unduly complicating matters by addressing the potential for minor inaccuracies, such as those that might be caused by slight differences in run times for burners and air circulating fans (see section III.B.3 below). DOE requests comments on this approach for characterizing the active mode, standby mode, and off mode operation of vented heaters.

1. Treatment of Fossil-Fuel Consumption in Existing Test Procedures for Fossil-Fueled Vented Heaters

DOE has tentatively concluded that the existing test procedures for vented heaters already fully account for and integrate standby mode and off mode fossil fuel energy consumption.[5] Underlying the basis for this conclusion is the manner in which gas consumption is accounted for in two of the test procedure's efficiency metrics, the part-load fuel utilization efficiency and the Annual Fuel Utilization Efficiency (AFUE).

The existing test procedure for vented heaters is a flue loss procedure which, accordingly, requires measurement of temperatures and percent concentrations of carbon dioxide (CO_2) in the flue. The fossil fuel and electric input is measured within a tolerance of the nameplate input.[6] For units equipped with a constant-burning pilot light, a separate measurement of energy input to the pilot light is required. An exception to the pilot light measurement requirement is granted to manually-controlled heaters where the pilot light is designed to be turned off by the user when the heater is not in use and where the unit is labeled with instructions to do so.

From this relatively limited set of data, on-cycle and off-cycle losses are determined using empirical coefficients and a suite of calculations that address various design features such as manual and modulating controls. Direct measurement of draft coefficients for units that are installed with thermal stack dampers is required. At the manufacturer's discretion, this direct measurement procedure is optional for vented heaters without thermal stack dampers. The gas pilot light consumption is present during testing and is, therefore, accounted for in the off-cycle.

The test procedure's on-cycle and off-cycle provisions are essentially identical in meaning to the EISA 2007 statutory definitions of "active mode" and "standby mode," respectively. This on-cycle/off-cycle format provides a complete accounting of gas energy use during the entire heating season. In EISA 2007 terminology, gas consumption in both active mode and standby mode is fully accounted for and integrated into the test procedure's primary efficiency metric, part-load fuel utilization efficiency.

A second efficiency descriptor, AFUE, provides an accounting of the non-heating-season fossil-fuel energy consumption (*i.e.,* pilot light energy consumption). Non-heating season directly relates to the EISA 2007 definition of "off mode." Accordingly, DOE has tentatively concluded that the AFUE provides a full accounting of fossil-fuel off mode energy consumption pursuant to EISA 2007.

Part-load efficiency is calculated for vented heaters with manual controls and thermal dampers. For all other vented heaters, the calculations produce an AFUE without separately calculating part-load efficiency. Nonetheless, regardless of whether part-load efficiency is separately calculated or not, AFUE represents a full accounting of annual fossil-fuel consumption (*i.e.,* active mode, standby mode, and off mode) into a single efficiency descriptor.

In addition to the efficiency descriptors discussed above, the vented heater test procedure's annual energy consumption calculations also represent a complete accounting of fossil-fuel energy consumption.

In sum, the energy efficiency and consumption equations in the existing test procedures for vented heaters provide an entire year's accounting of fossil-fuel energy consumption (*i.e.,* 8,760 hours),[7] which includes active mode, standby mode, and off mode energy consumption, as required under EISA 2007. Given that EISA 2007 does not prescribe any time periods over which to measure the energy consumption for all three modes, DOE believes it is reasonable to interpret the Act as permitting the consolidation of active mode, standby mode, and off mode together into an entire year's accounting.

In consideration of the above, and pursuant to section 310(2)(A)(i) of EISA 2007, DOE has tentatively concluded that the existing test procedures for vented heaters already fully account for and integrate standby mode and off mode fossil-fuel energy consumption.

2. Specific Amendments for Vented Heaters

Some vented heaters have electric auxiliaries. In most cases, the only electric auxiliary associated with vented heaters is the air circulating fan. However, it is conceivable that other auxiliaries, such as power burners and damper controls, could be present, and such devices may have associated electric standby mode and off mode energy consumption. The vented heater test procedure, as written, requires measurement of maximum auxiliary electric power and does not distinguish separate measurements of multiple components. For vented heaters so equipped, this maximum auxiliary electric power measurement would include the total active wattage of multiple auxiliaries. DOE believes this single measurement of maximum active wattage coupled with the estimate of active hours, discussed below in section III.B.3, constitutes a full accounting of what EISA 2007 refers to as active mode electrical consumption. Accordingly, no amendments are offered today to expand the active mode accounting of electrical energy consumption.

[5] The only possible fossil fuel standby mode or off mode energy use for vented heaters would be the energy consumption associated with a constant-burning pilot light. Therefore, only gas-fired vented heaters are a part of this discussion, where the term "gas-fired" encompasses both natural gas and propane. Oil-fired vented heaters do not have pilot lights. In the case of electrical energy use, all types of vented heaters may have measurable standby mode and off mode energy use.

[6] Nameplate input is the energy supply rate in Btus per hour, which is physically listed on the tested vented heater. Testing at this input would be the most appropriate and consistent way to specify a uniform test input rate.

[7] Each year comprises 8,760 hours—*i.e.* (365 days/year) × (24 hours/day) = 8,760 hours/year.

However, since operation of vented heaters with electric auxiliaries may also result in electric energy consumption in standby mode and off mode, and since electric standby mode and off mode are not accounted for, it will be necessary to amend the vented home heating equipment test procedures. First, it is necessary to include a measurement of the standby mode and off mode electrical consumption rate (*i.e.,* wattages). This can be done by adding a new subsection to the vented home heating equipment test procedure. Specifically, separate measurements of standby mode and off mode wattages can be added to section 3.0, Testing and measurements, of 10 CFR part 430, subpart B, appendix O. For these provisions, DOE proposes to reference IEC Standard 62301 for the measurement itself. The added section would require only one measurement of wattage if there is no difference between standby mode and off mode. Separate measurements would be required if a difference is expected. Clarification of the requirement for separate measurements is provided in section III.B.4.

It is further clarified in this added section that the existing test procedure specifications for ambient temperature and voltage shall apply in lieu of the IEC 62301 standard provisions for these parameters. This is done to avoid the possibility of unnecessary burden that might result if the slightly different IEC provisions were required. These parameters have little bearing on the measurement of electrical standby mode and off mode energy consumption as long as they are reasonably uniform during the test. The existing test procedure requires uniform control of these parameters and, thus, should suffice for these added measurements.

A second amendment is needed to specify how to calculate the annual electrical standby mode and off mode energy consumption from the measured wattages. This can be done by adding a new calculation subsection within existing section 4.0, *Calculations,* of 10 CFR part 430, subpart B, appendix O. The new subsection would be designated as 4.7, *Average annual electric standby mode and off mode energy consumption.* This added subsection would assign mode hours consistent with the annual accounting already in the test procedure. Specifically, off mode hours would be assigned the test procedure's value for non-heating season hours. Standby mode hours would be assigned the test procedure's value for heating season hours minus the active mode hours, where active mode hours would be assigned the test procedures value for burner operating hours.

No changes to the current regulating quotient, AFUE, are proposed. Therefore, the proposed test procedure amendments related to standby mode and off mode would not impact testing and certification under the existing energy conservation standard (which does not currently address standby mode and off mode energy consumption in a comprehensive manner). DOE considered proposing an integrated AFUE that would incorporate the standby mode and off mode energy consumption into the existing AFUE by adding this additional energy consumption to the active energy consumption within the AFUE quotient. However, DOE has determined that such integration is technically infeasible for vented heaters. This is because the standby mode and off mode energy usage is essentially not measureable due to the fact that most manufacturers' ratings of AFUE (as well as the current energy conservation standards) are presented to the nearest whole number, and the magnitude of the energy for standby mode and off mode would be so comparatively small that it would be unlikely to change the reported value. For example, assuming a representative 4 watts [8] of standby mode and off mode power might only represent 0.3 percent of the total active energy consumption, and it is expected that in most cases, no change in the reported AFUE would result because of the integration.

DOE's proposed approach would allow for the measurement of standby mode and off mode electrical energy consumption of different vented heater products. Although the magnitude of energy savings may be small for a given unit, it could be substantial when aggregated across the full range of covered products over the 30-year analysis period. DOE plans to further address the standby mode and off mode electrical energy consumption of vented heaters in the next standards rulemaking.

DOE seeks comment on its tentative conclusion that it would be technically infeasible to adopt an integrated AFUE for vented heaters, as well as the accuracy of the assumptions made regarding the relative magnitude of the standby mode and off mode energy consumption for vented heaters.

[8] DOE does not have complete knowledge of the range of expected standby wattages for all types of vented heaters at this time, but it is assumed to be less than the 7-watt average that DOE has determined for central furnaces. This is because vented heaters typically do not have as extensive an array of electrical components and controls as compared to central furnaces. For example, a vented heater may have one small fan as its only electrical component, whereas a central furnace might have a larger circulating fan, electrical power burners, igniters, and considerably more associated electronic controls.

3. Active Mode Hours Approximated by Burner Operating Hours for Vented Heaters

As mentioned above in section III.B.2, today's proposal would assign active mode hours of a particular vented heater as its burner operating hours (BOH). BOH is a calculated value in the existing test procedure for gas-fired and oil-fired vented heaters. BOH is determined by estimating the expected annual heating load and deducing the burner on hours necessary to address the annual heating load. BOH is exactly the active mode hours for the burner itself. However, the blower and other electric auxiliaries may have different active mode hours because of intentional time delays and overruns. This possible slight inaccuracy in the active mode hours accounting would be expected to have an insignificant effect on the overall accounting of standby mode and off mode energy consumption, considering the order of magnitude difference between standby mode and off mode hours compared to active mode hours. For example, assuming a representative BOH of 800 hours, the corresponding standby mode and off mode hours would be 7,960 hours (8,760 − 800); accordingly, a one-percent error in BOH would result in a 0.1-percent error in standby mode and off mode accounting. Therefore, considering the complexity and increased burden of expanding the accounting to provide detailed auxiliary run hours with no significant improvement in quantifying the magnitude of standby mode and off mode energy consumption, DOE maintains that assigning active mode hours for all electrical auxiliaries as burner operating hours is both uniform and reasonable.

4. Measurement of Standby Mode and Off Mode Wattages of Vented Heaters

Today's proposed amendments allow for a single wattage (*i.e.,* electrical power) measurement to serve as both standby mode wattage and off mode wattage. DOE has tentatively concluded that this is a reasonable approach when there is expected to be no difference between the two modes in terms of wattage. This would be the case for most vented heater designs where the appliance is not disconnected from the electric power source or where there is an absence of some other condition that would affect standby mode and off mode wattage. The utilization of a seasonal off switch would be a case

where a reduction or elimination of off mode wattage compared to standby mode wattage can be expected. On units so equipped, a separate measurement of off mode wattage would be required, and zero wattage for off mode would be a distinct possibility. Although DOE is not currently aware of some other factor or condition that might affect a difference between standby mode and off mode, a separate measure of off mode wattage would also be required anytime the wattages are expected to differ.

DOE believes the phrases "reduction or elimination" and "seasonal off switch" are unambiguous and clear enough to direct the testing official as to when a separate measurement of off mode wattage is needed. DOE invites comments on the appropriateness and workability of these provisions.

5. Incorporating by Reference IEC Standard 62301 (First Edition 2005–06) for Measuring Standby Mode and Off Mode Energy Consumption for Vented Heaters

As noted previously, EPCA, as amended by EISA 2007, requires that test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. (42 U.S.C. 6295(gg)(2)(A)) Today's amendments would reference the IEC Standard 62301 to obtain the standby mode and off mode measured wattage. The amended test procedure would use these measured wattages in calculations to accomplish the incorporation of standby mode and off mode energy consumption into the test procedures. DOE reviewed the IEC Standard 62301 and believes it is generally applicable to vented heater testing, although some clarification is needed. Specifically, because there is a possible conflict with provisions of the existing procedures, DOE is clarifying in the proposed standby mode and off mode measurement provisions that the accuracy and precision provisions of the IEC Standard 62301 are to be used in lieu of the existing test procedure accuracy provisions. The issues addressed in the IEC Standard 62301 of supply voltage waveform and power measurement accuracy apply to any measurement of low electrical power, including the low-power measurement for vented heater standby mode and off mode. The existing test procedures' accuracy and measurement provisions will still apply to the measurement of active mode electricity consumption. Further, it is clarified that the existing test procedure's specification of room ambient temperature and voltage, and not the corresponding specifications of the IEC Standard, will apply for these measurements. The IEC specification of room ambient conditions is slightly more restrictive than those of the existing DOE test procedure. However, DOE has tentatively concluded that there would be no meaningful difference in wattage measurement resulting from the two differing specifications. Overall, IEC Standard 62301 is concise and well organized, and its use should not pose a significant burden to anyone having the ordinary skill and knowledge associated with the vented heater manufacturing and testing industries.

DOE also reviewed IEC Standard 62087, which specifies methods of measuring the power consumption of television (TV) receivers, video cassette recorders (VCRs), set top boxes, audio equipment, and multi-function equipment for consumer use. IEC Standard 62087 does not, however, include measurement for the power consumption of electrical appliances such as vented heaters. Therefore, DOE has tentatively concluded that IEC Standard 62087 is unsuitable for use regarding the proposed amendments to the vented heater test procedures.

C. Proposed Test Procedure Amendments for Unvented Heaters

Consistent with the requirements of EISA 2007, today's proposal also includes test procedure amendments to address the standby mode and off mode energy consumption of unvented heaters. These amendments are less involved, as compared to those for vented heaters. Specifically, to effect the necessary changes for unvented heaters, DOE proposes to add only certain measurement provisions to the existing test procedure. DOE has tentatively concluded that no added or amended calculations to quantify annual standby mode and off mode energy use are necessary. The reasons for this approach are discussed below in detail. DOE believes that its proposed amendments are appropriate for unvented heater products and are consistent with the direction provided in EISA 2007 for both test procedures and standards. (42 U.S.C. 6295(gg)(2) and (3))

By way of background, the unvented heater test procedure is found at 10 CFR 430.23(g) and 10 CFR part 430, subpart B, appendix G. This test procedure applies to the active mode of both electric and fossil-fueled unvented heaters, and it only requires measurement of input energy rate (*e.g.,* Btu's/hour). Output energy rate is simply equated to input energy rate, because all the input energy is delivered to the heated space as useful heat. This energy rate is converted by mathematical constants to either dollars per million Btu's output and/or annual energy consumption. (Annual energy consumption is calculated only for heaters that are the primary heating source for the entire house. Supplemental heaters only require calculation of dollars per million Btu's.) As currently written, this test procedure generally reflects the lack of any appreciable energy performance difference among models of this product subcategory. This product subcategory has not been subject to any labeling requirements or energy conservation standards, because of the lack of appreciable performance difference as would support regulation. As mentioned above, pursuant to EISA 2007, DOE must now include provisions to measure standby mode and off mode energy use in the test procedures used for these and many other products. This brings up the question of whether unvented heaters use energy in standby mode or off mode and whether this energy consumption might be regulated. DOE anticipates that such test procedure amendments could identify an opportunity for energy performance improvements in unvented heater models, which would in turn require DOE to consider regulating this energy performance.

DOE realizes that this product subcategory presents a unique set of circumstances when addressing the applicable provisions of EISA 2007, particularly the requirement to eventually include standby mode and off mode energy consumption in a future energy conservation standard. First, unlike other test procedures, appendix G does not include energy efficiency or energy use metrics that would allow for the integration of standby mode and off mode energy use. Instead, it merely provides a measure of energy consumption for that unit. As a consequence, there currently exists no basis to establish what EISA 2007 would call a single or integrated standard for the energy efficiency of unvented heaters.

Second, standby mode energy use (defined as energy use during the heating season when the heater is not on) is as effective in heating the space as active mode energy use. Therefore, this energy consumption is not energy waste, but, rather, it is useful output. Accordingly, it may not be beneficial to measure this energy use or appropriate to consider its regulation in an energy conservation standard, unless it is

properly considered as part of the overall system.

Finally, off mode energy consumption (defined as non-heating-season energy consumption) could be considered ineffective energy use and, accordingly, could be minimized by prescribing a separate energy conservation standard. However, defining a representative off mode for this subcategory is difficult because of the lack of data on consumer use. For example, prior to the present rulemaking proceeding, DOE has not been aware of data, or attempted to collect data, on the fraction of the year unvented heaters might be unplugged or otherwise disconnected from the energy source, and the extent to which pilot lights are turned off during the non-heating season.

This unique set of circumstances formed the basis of an inquiry to nine manufacturers of unvented heaters, a number which DOE believes would provide representative input from the affected industry. Specifically, a request for information regarding possible standby mode and off mode energy use for unvented heaters was sent to manufacturers in March 2009. This request for information outlined the issue and asked specific questions designed to aid DOE in addressing the requirements of EISA 2007 for these products. The letter and responses received are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/water_pool_heaters_tp_nopr.html.*

Basically, all respondents agreed as to the unique set of circumstances for this product type. The respondents reported that standby mode and off mode energy use is present in some designs of unvented heaters. Specifically, fossil-fueled unvented heaters could have constant-burning pilot lights and electric remote controls, both of which would contribute to standby mode and off mode energy use. Similarly, electric heaters could have remote controls that would contribute to off mode energy use. All respondents agreed that it is difficult to define an average representative use cycle for these products, particularly in the off mode. One respondent, the Association of Home Appliance Manufacturers (AHAM), suggested that the off mode be ignored entirely for portable electric heaters, considering the evidence of these units being unplugged when not in use. Specifically, AHAM stated that consumer data, collected by The Stevenson Group for AHAM in 2004, reports that 86 percent of the consumers unplug their portable electric heaters per the safety instructions. (AHAM, No. 2 at pp. 1–2)

In consideration of all of above, DOE believes that the best way to satisfy the EISA 2007 test procedure requirements is to propose additional measurement provisions for standby mode and off mode energy rates without attempting to define an average representative use cycle. The added measurement provisions for pilot lights would be similar those already incorporated in vented heater test procedure. The added measurement provisions for electrical standby mode and off mode energy use rates would be similar to what is proposed today for vented heaters. Both of these added provisions would allow for exemption from measurement if there is means to disconnect the power source when not in use and instructions to do so are clearly visible. This exemption from measurement is identical to what is currently in the existing vented heater test procedures as applied to pilot lights on manually-controlled heaters. DOE believes this exemption from measurement should apply to unvented heaters so equipped.

The proposed approach does not relinquish DOE's authority to regulate unvented direct heating equipment, given the statutory directive to consider amended standards for "direct heating equipment" generally. (42 U.S.C. 6295(e)) The results of the additional measurements provisions could be used to regulate standby mode and off mode energy use for these products.

DOE is interested in receiving comment on its tentative decision not to define a representative use cycle for unvented heaters and the sufficiency of the proposed amendments. DOE is particularly interested in data that might allow for more complete treatment of unvented heaters.

D. Proposed Test Procedure Amendments for Pool Heaters

As indicated above, EISA 2007 requires amendment of the test procedures for pool heaters to account for standby mode and off mode energy consumption. The applicable pool heater test procedure is found at 10 CFR 430.23(p) and 10 CFR part 430, subpart B, appendix P. As explained below, consumption of fossil fuel in the standby mode is already included in the existing test procedure's calculations. However, DOE is proposing to add a specific measurement procedure for fossil-fuel standby mode and off mode energy consumption, because there is currently no protocol for actual measurement of such energy consumption. In addition, measurement and calculation provisions need to be added for off mode fossil-fuel energy consumption. Furthermore, the test procedures need additional measurement and calculation provisions to integrate electrical standby mode and off mode energy use, as required by EISA 2007. The sections below explain the existing test procedure's requirements for measuring the fossil-fuel and electrical energy consumption of pool heaters, followed by a discussion of DOE's proposed amendments pertaining to the measurement of standby mode and off mode energy consumption for these products.

1. Treatment of Fossil-Fuel Consumption in Existing Test Procedures for Pool Heaters

The existing DOE test procedure for pool heaters is based on a steady-state measure of thermal efficiency in active mode, as specified by ANSI Standard Z21.56–1994, "Gas-Fired Pool Heaters." (It is noted that "thermal efficiency" is specified by statute as the regulating efficiency descriptor. (42 U.S.C. 6291(22)) It is also noted that the current version of this ANSI standard was released in 2006. Upon review, DOE found no substantive differences between the 1994 version and the 2006 version, and accordingly, DOE is proposing to update the incorporation by reference in DOE's regulations at 10 CFR 430.3.) The DOE pool heater test procedure as it now appears in 10 CFR part 430, subpart B, appendix P extends this ANSI procedure by creating a heating seasonal efficiency descriptor ($EFFY_{HS}$). The heating seasonal efficiency accounts for active and standby modes of fossil-fuel energy consumption, and unlike thermal efficiency, it also accounts for auxiliary electrical energy consumption in the active mode, which is identified in the test procedure as the period of time when the main heating device is energized.

Fossil-fuel energy consumption in the standby mode, which is essentially the pilot light energy consumption (Q_P), is included in the existing test procedure's calculations of heating seasonal efficiency. The term Q_p is currently included in the test procedures' equations without a specified protocol to ascertain the value of Q_p. No default value for Q_p is specified, so it is not clear how this value is obtained. Accordingly, today's proposal would provide a method by which to measure the pilot light energy consumption to help quantify fossil fuel consumption in the standby mode.

The existing test procedures' heating seasonal efficiency includes an accounting of fossil-fuel standby mode that DOE believes is consistent with

EISA 2007 guidance for standby mode. Specifically, standby mode is when the pool heater is connected to the main power source but the heater's main heating device is not functioning. The test procedure establishes that the duration of the standby mode is equivalent to the number of pool operating hours (POH) during the year (4,464 hours) minus the burner operating hours (BOH = 104 hours), where 4,464 and 104 are assigned values already in the existing test procedure. DOE believes this accounting is consistent with EISA 2007 and, accordingly, should remain as the basis of incorporating standby mode. Under today's modified approach, the active mode rate of consumption would be multiplied by the time during which the pool heater is in the active mode, and the standby mode rate of consumption would be multiplied by the time during which the pool heater is in the standby mode.

The existing DOE pool heater test procedure does not account for off mode fossil-fuel energy consumption (*i.e.,* the amount of energy used when the pool heater is not in service). Off mode operation would occur outside the pool heating season that is currently described in the test procedure by the average number of pool operating hours during the year, which is defined as 4,464 h per year throughout the country. The pilot light energy consumption during this period would be an example of off mode fossil-fuel energy consumption. Under the modified approach, DOE proposes to now include off mode fossil-fuel energy consumption measurement provisions and to incorporate the results into the test procedures' energy usage and efficiency equations. Again, under today's modified approach, the off mode rate of consumption would be multiplied by the time during which the pool heater is in the off mode. However, for pool heaters with a seasonal off switch, off mode fossil-fuel energy consumption would be assigned a value of zero.

2. Treatment of Electricity Consumption in Existing Test Procedures for Pool Heaters

As mentioned in section III.D.1, the electricity consumption during active mode is incorporated in the heating seasonal efficiency descriptor, but electricity consumption during the standby mode or off mode is not considered in the existing DOE pool heater test procedure. Under the modified approach, DOE proposes to introduce standby mode and off mode electrical energy consumption measurement provisions and to incorporate the results into the test procedures' energy usage and efficiency equations. However, for pool heaters with a seasonal off switch, off mode electrical energy consumption would be assigned a value of zero.

3. Measurement of Standby Energy Consumption in ANSI/ASHRAE Standard 146–2006

ANSI/ASHRAE Standard 146–2006, "Method of Testing and Rating Pool Heaters," extends the procedure specified by ANSI Standard Z21.56 by including a test in which the energy consumption in standby mode is measured. During this 60-minute standby test, the thermostat setting for the pool heater is set low enough so that the pool heater does not enter active mode during the test. The total electricity and natural gas energy consumption is measured over this 60-minute period and added to provide a metric for standby mode energy consumption. Today's NOPR proposes to adopt a similar approach to measure standby mode and off mode energy consumption. DOE believes that ANSI/ASHRAE 146–2006 cannot be adopted "as-is" because there are some terminology differences specific to implementation of the requirements of EISA 2007. For example, there is no measurement or definition of "off mode" in ANSI/ASHRAE 146–2006.

4. Specific Amendments for Pool Heaters

The proposed amendments to appendix P would modify the existing test procedure by adding a standby mode energy consumption measurement that is similar to that used in the ASHRAE Standard 146, "Method of Testing for Rating Pool Heaters," but that is tailored to address the specific concepts of EISA 2007. Specifically, a definition section would be added to the test procedure to clarify the EISA 2007 definitions of "active mode," "standby mode," and "off mode," as applied to pool heaters. Separate measurement and calculation provisions would be added to allow separate quantification of standby mode and off mode energy consumption. A new efficiency descriptor, integrated thermal efficiency, would replace the heating seasonal efficiency to allow for integration of standby mode and off mode energy consumption into a single efficiency measure. The term "integrated thermal efficiency" is used to maintain consistency with the statute. This approach would allow for the integration and incorporation of standby mode and off mode energy consumption into both the test procedure and an energy conservation standard, as called for in 42 U.S.C. 6295(gg)(2)(A) and 42 U.S.C. 6295(gg)(3) respectively. The thermal efficiency descriptor will remain in the test procedure to provide the regulating basis for the current energy conservation standard.

Unlike the integrated AFUE for vented heaters discussed above, DOE has tentatively concluded that the integrated thermal efficiency is technically feasible and would provide measurable performance differentiation, because the added standby mode and off mode energy consumption is significant relative to the active energy consumption of the original thermal efficiency. There are two contributing factors to this conclusion: (1) The added energy consumption includes both fossil fuel and electrical energy consumption, and (2) the active energy consumption is relatively smaller because of the smaller number of active mode hours for pool heaters as compared to vented heaters. As a result, the pilot light alone would be expected to have the effect of reducing the thermal efficiency by a few percentage points.

Additionally, the proposed amendments to appendix P would update the references to ANSI Standard Z21.56–2006, the most recent version of that standard. As noted above, DOE has compared this version with the currently-referenced version from 1994 and found no substantive differences between the two test methods.

5. Incorporating by Reference IEC Standard 62301 (First Edition 2005–06) for Measuring Standby Mode and Off Mode Energy Consumption for Pool Heaters

As noted previously, EPCA, as amended by EISA 2007, requires that DOE test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. (42 U.S.C. 6295(gg)(2)(A)) Today's amendments to the pool heater test procedure would incorporate by reference IEC Standard 62301 to obtain the standby mode and off mode measured wattage. Today's proposed test procedure amendments would use these measured wattages in calculations to accomplish the incorporation of standby mode and off mode energy consumption into the test procedures.

DOE is proposing the following clarifications to avoid any conflicts between the existing test procedure and IEC Standard 62301. First, DOE proposes to clarify that the room ambient temperature and voltage

specifications of the existing test procedure would suffice to carryout the new wattage measurements and should continue to be used rather than the corresponding specifications of room ambient temperature and voltage in IEC Standard 62301. DOE has tentatively concluded that there would be no meaningful difference in the wattage measurement resulting from the slightly differing specifications for room ambient temperature and voltage. Second, DOE would clarify that the accuracy and measurement provisions of IEC Standard 62301 are appropriate for these measurements and would supersede the corresponding provisions of the existing test procedure. DOE believes the issues addressed in section 5 of IEC Standard 62301, related to supply voltage waveform and power measurement accuracy, would apply to any measurement of low electrical power, including the low-power measurement for pool heater standby mode and off mode. The existing test procedure's accuracy and measurement provisions will still apply to the measurement of active mode electricity consumption. In general, DOE believes IEC Standard 62301 is concise and well organized and would not impose a significant burden, given the considerable skill and knowledge base present in the pool heater manufacturing and associated testing industries.

DOE also reviewed IEC Standard 62087, which specifies methods of measuring the power consumption of TV receivers, VCRs, set top boxes, audio equipment, and multi-function equipment for consumer use. IEC Standard 62087 does not, however, include measurement for the power consumption of electrical appliances such as pool heaters. Therefore, DOE has tentatively concluded that IEC Standard 62087 is unsuitable for use regarding the proposed amendments to the pool heater test procedures.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (*http://www.gc.doe.gov).*

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule would prescribe test procedure amendments that would be used to determine compliance with energy conservation standards for the products that are the subject of this rulemaking. Although DOE considers test procedure amendments for residential water heaters, direct heating equipment, and pool heaters in this rulemaking, DOE proposes amendments to the test procedures for pool heaters and direct heating equipment only. For the reasons stated earlier in the preamble, DOE has tentatively determined that amendments to the test procedure for water heaters are not necessary.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (NAICS) that are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* The threshold number designation as a small business under NAICS classification 333414, titled "Heating Equipment (Except Warm Air Furnaces) Manufacturing," is 500 employees. This classification specifically includes manufacturers of direct heating equipment and pool heaters.

Concurrent to this rulemaking for test procedures, DOE has been in the process of developing amended energy conservation standards for the products covered in this rulemaking. On December 11, 2009, DOE published a Notice of Proposed Rulemaking and Public Meeting for Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters in the **Federal Register**. 74 FR 65852. This notice inaccurately stated that the applicable NAICS classification number for pool heaters is 335228. As these rulemakings apply to the same sets of products, the DOE believes clarification is both necessary and appropriate. Additionally, DOE has included a similar notification regarding the correct NAICS classification number in the context of the final rule for Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters. The standards final rule was issued on March 31, 2010 and was published in the **Federal Register** on April 16, 2010. 75 FR 20112.

In the December 11, 2009 NOPR for energy conservation standards, DOE identified 12 small DHE manufacturers and one small pool heater manufacturer that can be considered small businesses. Pool heater manufacturers and the vented heater manufacturers of the DHE product class are the same as identified in the standards notice. An estimate of the number of manufacturers of unvented heaters was not developed as part of the standards analysis because, for reasons stated in the 2009 NOPR, DOE believes it is unnecessary to set minimum efficiency standards for unvented DHE. 74 FR 65852, 65866 (Dec. 11, 2009). Based on its interviews with manufacturers, DOE has tentatively determined that there are three unvented DHE manufactures considered small businesses.

For the reasons explained below, DOE has tentatively concluded that the proposed rule would not have a significant impact on either small or large manufacturers under the applicable provisions of the Regulatory Flexibility Act. The proposed rule would amend DOE's test procedures for direct heating equipment and pool heaters by incorporating testing provisions to address standby mode and off mode energy consumption. The proposed procedures involve measuring power input when the direct heating equipment or pool heater is in standby mode and off mode during testing. Pool heater proposed test procedure amendments would require measurement of both fossil fuel and electric energy use in standby mode and off mode. DHE proposed test procedure amendments would require measurement of only electrical energy use in standby mode and off mode.

These tests can be conducted in the same facilities used for the current energy testing of these products, so there would be no additional facilities costs required by the proposed rule. In addition, while the power meter proposed to be required for these tests might require greater accuracy than the power meter used for current energy testing, the investment required for a possible instrumentation upgrade would be modest. It is likely that the manufacturers, or their testing facilities, already have equipment that meets the requirements of IEC 62301, but an Internet search of equipment that specifically meets the requirements of IEC 62301 reveals a cost of approximately $2,700 to $3,000. This cost is small compared to the overall financial investment needed to undertake the business enterprise of testing consumer products which involves facilities, qualified staff, and specialized equipment.

The duration of the electrical standby mode and off mode testing for DHE is also short, approximately five minutes if the power supply is stable and ten minutes if the power supply is not stable. For example, testing with unstable power supply might require five minutes to determine that it is in fact unstable followed by an additional integrated test measurement of five minutes. The duration of the fossil fuel and electrical standby mode and off mode test proposed for pool heaters is one hour. This one hour time period is consistent with the industry consensus for such measurement (*i.e.,* the ASHRAE Standard 146), and, is not a significant extension of the DOE existing test procedures. The existing DOE test procedure requires, in addition to set-up, an establishment of steady state conditions that might approach 2 hours followed by the actual thermal efficiency test for 30 minutes. The proposed standby test could begin immediately following the thermal efficiency test and therefore, would not require additional set up, instrumentation, or waiting period. The testing official could run simultaneous tests on other units and simply record the results of the test at the end of the 60 minute standby period. For these reasons, DOE believes that the proposed requirements for equipment and time to conduct the additional tests would not be expected to impose a significant economic impact on affected entities, regardless of size.

Accordingly, DOE tentatively concludes and certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 1910–1400. Public reporting burden for compliance reporting for energy and water conservation standards is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to DOE (see **ADDRESSES**) and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

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.

D. Review Under the National Environmental Policy Act of 1969

In this rulemaking, DOE is proposing test procedure amendments that it expects would be used to develop and implement future energy conservation standards for residential direct heating equipment and pool heaters. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures for these products without changing their environmental effects, and, therefore, it is covered by Categorical Exclusion A5 in 10 CFR part 1021, subpart D, which applies because this rule would establish revisions to existing test procedures that would not affect the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE has examined this proposed rule and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation clearly specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and

(6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554; 44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action to amend the test procedures for residential direct heating equipment and pool heaters to address standby mode and off mode energy use is not a significant regulatory action under Executive Order 12866. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA). (15 U.S.C. 788) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedures addressed by this proposed rule incorporate testing methods contained in the commercial standards, the International Electrotechnical Commission (IEC) Standard 62301, "Household electrical appliances—Measurement of standby power," Publication 62301 First Edition 2005–06 and "American National Standards Institute (ANSI) Standard Z21.56–2006, "Gas-Fired Pool Heaters." DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC about the impact of these test procedures on competition, before prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section,

foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov*. Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. A court reporter will be present to record the proceedings and prepare a transcript.

The public meeting will be conducted in an informal, conference style. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on each specific topic, DOE will permit participants to clarify their statements briefly and to comment on statements made by others.

Participants should be prepared to answer DOE's and other participants' questions. DOE representatives may also ask participants about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures needed for the proper conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the transcript will be posted on the DOE Web site and are also available for purchase from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than November 15, 2010. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed paper original. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document that includes all of the information believed to be confidential, and one copy of the document with that information deleted. DOE will make its own determination as to the confidential status of the information and treat it accordingly.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. *Incorporation of IEC Standard 62301.* DOE invites comment on the adequacy of IEC Standard 62301 to measure standby mode and off mode power for vented heaters, unvented heaters, and pool heaters.

2. *No Need to Amend Water Heater Test Procedures.* DOE invites comment on its tentative conclusion that the current test procedures for water heaters already fully account for and incorporate measurement of standby mode and off mode energy consumption, as required by EISA 2007.

3. *Updated Reference for Pool Heater Testing.* DOE invites comment on the updated version of American National Standards Institute (ANSI) Standard Z21.56–2006, "Gas-Fired Pool Heaters," and whether it constitutes any substantive change relative to the 1994 version of ANSI Standard Z21.56 currently referenced in the existing test procedure.

4. *Integrated AFUE for Vented Heaters.* DOE seeks comment on its tentative conclusion that it would be technically infeasible to adopt an integrated AFUE for vented heaters, as well as the accuracy of the assumptions made regarding the relative magnitude of the standby mode and off mode energy consumption for vented heaters.

5. *Integrated Thermal Efficiency for Pool Heaters.* DOE seeks comment on the proposed efficiency descriptor, integrated thermal efficiency, that would allow for integration of standby mode and off mode energy consumption into a single efficiency measure, and whether this approach would allow for the integration and incorporation into the test procedure and an energy conservation standard, as called for in 42 U.S.C. 6295(gg)(2)(A) and 42 U.S.C. 6295(gg)(3) respectively.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 20, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 430 of chapter II, subchapter D of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.3 is amended by revising paragraph (c)(13) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(c) * * *

(13) ANSI Z21.56–2006 (“ANSI Z21.56”), Standard for Gas-Fired Pool Heaters, approved December 13, 2005, IBR approved for Appendix P to Subpart B.

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§ 430.23 [Amended]

3. Section 430.23 is amended by:

a. Removing the words “section 4.2 of appendix P” in paragraph (p)(1)(i) and adding in their place “section 5.2 of appendix P”, and

b. Removing the words “section 4.3 of appendix P” in paragraph (p)(1)(ii) and adding in their place “section 5.3 of appendix P”.

Appendix G to Subpart B—[Amended]

4. Appendix G to Subpart B of Part 430 is amended in section 2 by adding new sections 2.3, 2.3.1, 2.4, and 2.4.1 to read as follows:

Appendix G to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Unvented Home Heating Equipment

* * * * *

2. *Testing and measurements.*

* * * * *

2.3 *Pilot light measurement.* Except as provided in section 2.3.1, measure the energy input rate to the pilot light (Q_p), with an error no greater than 3 percent, for unvented heaters so equipped.

2.3.1 The measurement of Q_p is not required for unvented heaters where the pilot light is designed to be turned off by the user when the heater is not in use (*i.e.,* for units where turning the control to the OFF position will shut off the gas supply to the burner(s) and the pilot light). This provision applies only if an instruction to turn off the unit is provided on the heater near the gas control value (*e.g.,* by label) by the manufacturer.

2.4 *Electrical standby mode power measurement*. Except as provided in section 2.4.1, for all electric heaters and unvented heaters with electrical auxiliaries, measure the standby power (P_{SB}) in accordance with the procedures in the International Electrotechnical Commission (IEC) Standard 62301, “Household electrical appliances—Measurement of standby power,” Publication 62301 First Edition 2005–06 (incorporated by reference; see § 430.3), with all electrical components not activated. Voltage shall be as specified in section 1.4.1 *Electrical supply* of this appendix.

2.4.1 The measurement of P_{SB} is not required for heaters designed to be turned off by the user when the heater is not in use (*i.e.,* for units where turning the control to the OFF position will shut off the electrical supply to the heater). This provision applies only if an instruction to turn off the unit is provided on the heater (*e.g.,* by label) by the manufacturer.

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Appendix O to Subpart B—[Amended]

5. Appendix O to Subpart B of Part 430 is amended by:

a. Adding a Note after the heading;

b. Redesignating sections 1.1 through 1.33 as follows:

Old sections	New sections
1.1 to 1.14	1.2 to 1.15.
1.15 to 1.19	1.17 to 1.21.
1.20 and 1.21	1.23 and 1.24.
1.22 to 1.25	1.26 to 1.29.
1.26 to 1.33	1.31 to 1.38.

c. Adding new sections 1.1, 1.16, 1.22, 1.25 and 1.30;

d. Adding new sections 3.7, 3.7.1, and 3.7.2; and

e. Revising sections 4.6.3 and 4.6.3.1, and adding a new section 4.7.

The additions and revisions read as follows:

Appendix O to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

Note: The procedures and calculations that refer to standby mode and off mode energy consumption, (*i.e.,* sections 3.7 and 4.7 of this appendix O) need not be performed to determine compliance with energy conservation standards for vented heaters at this time. However, any representation related to standby mode and off mode energy consumption of these products made after [*date 180 days after date of publication of the test procedure final rule in the* **Federal Register**] must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1.0. *Definitions.*

1.1 “Active mode” means the condition during the heating season in which the vented heater is connected to the power source, and either the burner or any electrical auxiliary is activated.

* * * * *

1.16 “IEC 62301” means the test standard published by the International Electrotechnical Commission, titled “Household electrical appliances—Measurement of standby power,” Publication 62301 First Edition 2005–06. (incorporated by reference; see § 430.3)

* * * * *

1.22 “Off mode” means the condition during the non-heating season in which the vented heater is connected to the power source, and neither the burner nor any electrical auxiliary is activated.

* * * * *

1.25 “Seasonal off switch” means the control device, such as a lever or toggle, on the vented heater that affects a difference in off mode energy consumption as compared to standby mode consumption.

* * * * *

1.30 “Standby mode” means the condition during the heating season in which the vented heater is connected to the power source, and neither the burner nor any electrical auxiliary is activated.

* * * * *

3.0 *Testing and measurements.*

* * * * *

3.7 *Measurement of electrical standby mode and off mode power.*

3.7.1 *Standby power measurements.* With all electrical auxiliaries of the vented heater

not activated, measure the standby power (P_{SB}) in accordance with the procedures in IEC 62301 (incorporated by reference, see § 430.3), except that section 2.9, *Room ambient temperature,* and the voltage provision of section 2.3.5, *Electrical supply,* of this appendix shall apply in lieu of the IEC 62301 corresponding sections 4.2, *Test room,* and 4.3, *Power supply.* Clarifying further, the IEC 62301 sections 4.5, *Power measurement accuracy,* and section 5, *Measurements,* shall apply in lieu of section 2.8, *Energy flow instrumentation,* of this appendix. Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary.

3.7.2 *Off mode power measurement.* If the unit is equipped with a seasonal off switch or there is an expected difference between off mode power and standby mode power, measure off mode power (P_{OFF}) in accordance with the standby power procedures in IEC 62301 (incorporated by reference, see § 430.3), except that section 2.9, *Room ambient temperature,* and the voltage provision of section 2.3.5, *Electrical supply,* of this appendix shall apply in lieu of the IEC 62301 corresponding sections 4.2, *Test room,* and 4.3, *Power supply.* Clarifying further, the IEC 62301 sections 4.5, *Power measurement accuracy,* and section 5, *Measurements,* shall apply in lieu of section 2.8, *Energy flow instrumentation,* of this appendix. Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. If there is no expected difference in off mode power and standby mode power, let $P_{OFF} = P_{SB}$, in which case no separate measurement of off mode power is necessary.

4.0 *Calculations.*

* * * * *

4.6.3 *Average annual auxiliary electrical energy consumption for vented heaters.* For vented heaters with single stage controls or manual controls, the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$$E_{AE} = BOH_{SS}P_E + E_{SO}$$

Where:

BOH_{SS} = as defined in 4.6.1 of this appendix
P_E= as defined in 3.1.3 of this appendix
E_{SO} = as defined in 4.7 of this appendix

4.6.3.1 For vented heaters with two stage or modulating controls, E_{AE} is defined as:

$$E_{AE}=(BOH_R+BOH_H)P_E + E_{SO}$$

Where:

BOH_R= as defined in 4.6.1 of this appendix
BOH_H= as defined in 4.6.1 of this appendix
P_E= as defined in 3.1.3 of this appendix
E_{SO} = as defined in 4.7 of this appendix

* * * * *

4.7 *Average annual electric standby mode and off mode energy consumption.* Calculate the annual electric standby mode and off mode energy consumption, E_{SO}, defined as, in kilowatt-hours:

$$E_{SO} = ((P_{SB} * (4160 - BOH)) + (P_{OFF} * 4600)) * K$$

Where:

P_{SB} = vented heater standby mode power, in watts, as measured in section 3.7
4,160 = average heating season hours per year
P_{OFF} = vented heater off mode power, in watts, as measured in section 3.7
4,600 = average non-heating season hours per year
K = 0.001 kWh/Wh, conversion factor for watt-hours to kilowatt-hours.
BOH = burner operating hours as calculated in section 4.6.1 where for single stage controls or manual controls vented heaters BOH = BOH_{SS} and for vented heaters equipped with two stage or modulating controls BOH = (BOH_R + BOH_H).

6. Appendix P to Subpart B of Part 430 is revised to read as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 2.2, 2.3, 3.2, 4.2, 4.3, 5.3 equation (3), and 5.4 of this appendix P) need not be performed to determine compliance with energy conservation standards for pool heaters at this time. However, any representation related to standby mode and off mode energy consumption of these products made after [*date 180 days after date of publication of the test procedure final rule in the* **Federal Register**] must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1. *Definitions.*

1.1. *Active mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and the main burner, electric resistance element, or heat pump is activated to heat pool water.

1.2 *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled "Household electrical appliances—Measurement of standby power," Publication 62301 First Edition 2005–06. (incorporated by reference; see § 430.3)

1.3 *Off mode* means the condition during the non-pool heating season in which the pool heater is connected to the power source, and neither the main burner, electric resistance elements, nor heat pump is activated.

1.4 *Seasonal off switch* means a switch present on the pool heater that effects a difference in off mode energy consumption as compared to standby mode energy consumption.

1.5 *Standby mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and neither the main burner, electric resistance elements, nor heat pump is activated.

2. *Test Method.*

2.1 *Active mode.* The test method for testing pool heaters in active mode is as specified in ANSI Z21.56 (incorporated by reference; see § 430.3).

2.2 *Standby mode.* The test method for testing the energy consumption of pool heaters in standby mode is as described in sections 3 through 5 below.

2.3 *Off mode.*

2.3.1 *Pool heaters with a seasonal off switch.*

For pool heaters with a seasonal off switch, no off-mode test is required.

2.3.2 *Pool heaters without a seasonal off switch.*

For pool heaters without a seasonal off switch, the test method for testing the energy consumption of the pool heater is as described in sections 3 through 5 below.

3. *Test conditions.*

3.1 *Active mode.* Establish the test conditions specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3).

3.2 *Standby mode and off mode.* Following the conclusion of the 30-minute active mode test described in section 3.1, reduce the thermostat setting to a low enough temperature to put the pool heater into standby mode. Reapply the energy sources and operate the pool heater in standby mode for 60 minutes.

4. *Measurements.*

4.1 *Active mode.* Measure the quantities delineated in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The measurement of energy consumption for oil-fired pool heaters in Btu is to be carried out in appropriate units (*e.g.,* gallons).

4.2 *Standby mode.* Record the total electricity consumption during the standby mode test, E_s, in Wh, in accordance with section 5 of IEC 62301 (incorporated by reference; see § 430.3) and the fossil fuel energy consumption during the standby test, Q_p, in Btu. Ambient temperature and voltage specifications of ANSI Z21.56 (incorporated by reference; see § 430.3) shall apply to this standby mode testing.

4.3 *Off mode.*

4.3.1 *Pool heaters with a seasonal off switch.* For pool heaters with a seasonal off switch, the total electricity consumption during the off mode, $E_{off} = 0$, and the fossil fuel energy consumed during the off mode, $Q_{off} = 0$.

4.3.2 *Pool heaters without a seasonal off switch.* Record the total electricity consumption during the standby/off mode test, E_{off} (= E_s), in Wh, in accordance with section 5 of IEC 62301 (incorporated by reference; see § 430.3), and the fossil fuel energy consumption during the off mode test, Q_{off} (= Q_p), in Btu. Ambient temperature and voltage specifications of ANSI Z21.56 (incorporated by reference; see § 430.3) shall apply to this off mode testing.

5. *Calculations.*

5.1 *Thermal efficiency.* Calculate the thermal efficiency, E_t (expressed as a percent), as specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The expression of fuel consumption for oil-fired pool heaters shall be in Btu.

5.2 *Average annual fossil fuel energy for pool heaters.* The average annual fuel energy for pool heaters, E_F, is defined as:

E_F = BOH Q_{IN} + (POH − BOH)Q_{PR} + (8760 − POH) $Q_{off,R}$

Where:

BOH = average number of burner operating hours = 104 h

POH = average number of pool operating hours = 4464 h

Q_{IN} = rated fuel energy input as defined according to section 2.10.1 or section 2.10.2 of ANSI Z21.56 (incorporated by reference; see § 430.3), as appropriate.

Q_{PR} = average energy consumption rate of continuously operating pilot light, if employed, = (Q_P/1 h)

Q_P = energy consumption of continuously operating pilot light, if employed, as measured in section 4.2, in Btu

8,760 = number of hours in one year

$Q_{off,R}$ = average off mode fossil fuel energy consumption rate = Q_{off}/(1 h)

Q_{off} = off mode energy consumption as defined in section 4.3 of this appendix

5.3 *Average annual auxiliary electrical energy consumption for pool heaters.* The average annual auxiliary electrical energy consumption for pool heaters, E_{AE}, is expressed in Btu and defined as:

(1) $E_{AE} = E_{AE,active} + E_{AE,standby,off}$

(2) $E_{AE,active}$ = BOH * PE

(3) $E_{AE,standby,off}$ = (POH − BOH) $E_{s,aux}$ + (8760 − POH) $E_{off,aux}$

Where:

$E_{AE,active}$ = auxiliary electrical consumption in the active mode

$E_{AE,standby,off}$ = auxiliary electrical consumption in the standby and off mode

PE = $2E_c$, if heater is tested according to section 2.10.1 of ANSI Z21.56 (incorporated by reference; see § 430.3), in Btu/h

= 3.412 PE_{rated}, if heater is tested according to section 2.10.2 of ANSI Z21.56, in Btu/h

E_c = electrical consumption of the heater (converted to equivalent unit of Btu), including the electrical energy to the recirculating pump if used, during the 30-minute thermal efficiency test, as defined in section 2.10.1 of ANSI Z21.56, in Btu per 30 min.

2 = conversion factor to convert unit from per 30 min. to per h.

PE_{rated} = nameplate rating of auxiliary electrical equipment of heater, in Watts

BOH = as defined in 5.2 of this appendix

POH = as defined in 5.2 of this appendix

$E_{s,aux}$ = electrical energy consumption rate during standby mode = 3.412 E_s/(1 h), Btu/h

E_s = as defined in 4.2 of this appendix

$E_{off,aux}$ = electrical energy consumption rate during off mode = 3.412 E_{off}/(1 h), Btu/h

E_{off} = as defined in 4.3 of this appendix

5.4 Integrated thermal efficiency.

5.4.1 Calculate the seasonal useful output of the pool heater as:

E_{OUT} = BOH[(E_t/100)(Q_{IN} + PE)]

Where:

BOH = as defined in 5.2 of this appendix

E_t = thermal efficiency as defined in 5.1 of this appendix

Q_{IN} = as defined in 5.2 of this appendix

PE = as defined in 5.3 of this appendix

100 = conversion factor, from percent to fraction

5.4.2 Calculate the annual input to the pool heater as:

E_{IN} = E_F + E_{AE}

Where:

E_F = as defined in 5.2 of this appendix

E_{AE} = as defined in 5.3 of this appendix

5.4.3 Calculate the pool heater integrated thermal efficiency (TE_I) (in percent).

TE_I = 100(E_{OUT}/E_{IN})

Where:

E_{OUT} = as defined in 5.4.1 of this appendix

E_{IN} = as defined in 5.4.2 of this appendix

100 = conversion factor, from fraction to percent

[FR Doc. 2010–21363 Filed 8–27–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0107; Directorate Identifier 2007–NM–087–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. The original NPRM would have required inspections for scribe lines in affected lap and butt splices, wing-to-body fairings locations, and external repair and cutout reinforcement areas; and related investigative and corrective actions if necessary. The original NPRM resulted from reports of scribe lines found at lap joints and butt joints, around external doublers and antennas, and at locations where external decals had been cut. This action revises the original NPRM by revising certain compliance times including reducing the compliance time for certain repetitive inspections. This supplemental NPRM also proposes to add inspections for certain airplanes. We are proposing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin and cause sudden decompression of the airplane.

DATES: We must receive comments on this supplemental NPRM by September 24, 2010.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nicholas Han, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments

to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0107; Directorate Identifier 2007–NM–087–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. That original NPRM was published in the **Federal Register** on January 31, 2008 (73 FR 5768). That original NPRM proposed to require inspections for scribe lines in affected lap and butt splices, wing-to-body fairing locations, and external repair and cutout reinforcement areas; and related investigative and corrective actions if necessary.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, Boeing has issued Service Bulletin 747–53A2563, Revision 3, dated June 11, 2009; and Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010. The procedures in Revision 3 are essentially the same as those in Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008, which we referred to as the appropriate source of service information for accomplishing the actions proposed in the original NPRM. However, Revision 3 of this service bulletin changes the initial threshold for the inspection at certain lap joints and changes the repeat inspection intervals (including some reductions in inspection intervals) for many lap joint inspection areas. Revision 3 of this service bulletin also adds more work for airplanes that were previously inspected in Area 1 and Area 2 in accordance with Boeing Alert Service Bulletin 747–53A2563, dated March 29, 2007; Boeing Alert Service Bulletin 747–53A2563, Revision 1, dated November 8, 2007; or Boeing Service Bulletin 747–53A2563, Revision 2, dated June January 3, 2008.

Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010:

- Revises the repeat inspection interval data for lap joint and butt joint areas that have scribe damage which are inspected under the Limited Return to Service (LRTS) inspection program.
- For airplanes identified as Group 2, Group 3 Configuration 2, Group 4, Group 6, and Group 8 airplanes in Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010: Adds detailed inspections for scribe lines of the S–18L lap splice from station (STA) 1780 to STA 1920 (on the main deck side cargo door) to inspection area 3.
- For airplanes identified as Group 1 and Group 2 airplanes in Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010: Adds detailed inspections for scribe lines of the S34R lap splice from STA 1810 to STA 1920 (on the aft lower lobe cargo door).
- For airplanes identified as Group 3 and Group 4 airplanes in Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010: Adds detailed inspections for scribe lines of the S–6L and S–6R lap splice from STA 1000 to 1220 to inspection area 3.
- Adds general repair instructions for lap joint locations with scribe lines, but no cracks in Paragraph 3.B. of Part 17 in the work instructions and in a new Appendix F.

Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, adds more work for Group 1, Group 2, Group 3, Group 4, Group 6, and Group 8 airplanes that were previously inspected in Area 3 in accordance with the original issue, dated March 29, 2007; Revision 2, dated January 3, 2008; or Revision 3, dated June 11, 2009; of Boeing Service Bulletin 747–53A2563. Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, specifies that at the time given in Table 29 of Paragraph 1.E., "Compliance," of Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, certain lap splices are inspected in accordance with Paragraph 3.B., Work Instructions, PART 19.

Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, specifies that no more work is necessary on Group 5, Group 7, and Group 9 airplanes that were inspected in accordance with Boeing Service Bulletin 747–53A2563, Revision 3, dated June 11, 2009.

Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, states that if scribe lines were found previously and are being inspected as part of the LRTS program, the repeat inspections are done in accordance with Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010.

Requests To Delay AD Issuance Pending Revised Service Information

Japan Airlines (JAL) reports that certain structures prevented the accomplishment of the inspection specified in Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008. JAL therefore believes that more detailed information in the service bulletin is necessary to prevent operator inconvenience. We infer that the commenter is requesting that we delay issuing the final rule until Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008, is revised to address these concerns.

KLM reports that some of the nondestructive test (NDT) inspections could not be performed according to the procedures specified in Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008, without modifying the process itself. KLM adds that the inspection areas and details are vague, ambiguous, and subject to misinterpretation. KLM requests that, to eliminate requests for alternative methods of compliance (AMOCs) related to this matter, we delay issuing the final rule until these matters are resolved.

We agree that clarification may be necessary. While the commenters did not provide specific details of the difficulties they encountered, Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, clarifies multiple steps and procedures as described previously. We have revised this supplemental NPRM to refer to Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010.

Request To Delay AD Issuance Pending Repair Instructions

JAL states that the NPRM would require operators to contact the manufacturer for a method to repair discrepancies. (Although Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, specifies this directive, the original and this supplemental NPRM propose to require operators to contact the FAA for a repair method.) JAL anticipates many such inquiries from operators, resulting in delayed responses from the manufacturer. The commenter requests that we delay issuing the final rule until a typical repair is incorporated into the structural repair manual (SRM).

We do not agree with the commenter to delay the final rule until a typical repair can be incorporated into the SRM. Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, provides procedures for an inspection to determine the extent of scribe lines on the airplanes. This service bulletin refers to several SRMs as a source of information for repairing cracks. For certain repair instructions, this service bulletin also specifies to contact Boeing for repair instructions; however, paragraph (i) of this supplemental NPRM would require that operators repair in a manner approved by the FAA. In addition, Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, provides a LRTS inspection program for scribe lines found during the required inspections. We note the existing Model 747 SRMs referenced in Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, have lap splice repairs that are acceptable to repair scribe line damage. We have not changed the supplemental NPRM regarding this issue.

Request To Delay AD Issuance Pending Revised Inspection Interval

JAL notes that the inspection interval is the same from butt joint to butt joint or lap joint to lap joint. JAL states that it understands that the stress value can be provided (*i.e.,* the stress value can vary) from stringer to stringer or frame to frame. Therefore, JAL requests that we wait to issue the final rule until Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008, is revised to incorporate more detailed inspection intervals.

We infer that the commenter is asking if the repetitive inspection intervals along a lap splice from butt joint to butt joint, or along a butt joint from lap splice to lap splice, may be extended in certain areas if the local stresses are used to determine the repetitive intervals. We do not find any benefit in variable repetitive inspection intervals for a lap splice or butt splice. The repetitive inspection intervals have been determined after a review of the specific stresses the commenter notes, and then the stress that provided the lowest repetitive interval was used to simplify the inspection along a lap or butt splice. If each stringer or frame bay stress were used along the entire joint, the work instructions would become too large to manage and accomplish in a reasonable manner. Also, Boeing has released Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, and this revision includes improved data for the repeat inspection interval for lap joint and butt joint areas. We have not changed the supplemental NPRM in regard to this issue.

Request To Revise Inspection Threshold for Certain Airplanes

British Airways (BA) requests that we revise the inspection threshold for certain airplanes. BA states that the proposed inspection thresholds penalize operators of airplanes with lower flight cycles. BA recommends that we review Boeing's Fleet Team Resolution Process Item 04134, which discusses the check level required to accomplish the Area 1 inspections. According to the commenter, operator consensus indicates these inspections will require a D check. BA suggests that airplanes with fewer than 17,500 flight cycles be assigned a threshold of the earlier of the next D check following 15,000 total flight cycles, or 19,000 total flight cycles, whichever is sooner.

We do not agree to revise the inspection threshold for certain airplanes. We reviewed the Boeing Fleet Team Resolution Process Item 04134, which suggests that a D check would be the suitable opportunity to accomplish the scribe line inspections. We do not specify compliance times in terms of "letter checks." Since maintenance schedules vary among operators, we have determined that the compliance times as proposed are appropriate. The minimum grace period for compliance with this AD is 1,500 flight cycles for airplanes with fewer than 17,500 total flight cycles, which corresponds to approximately 3 years based on a typical utilization of 500 flight cycles per year for long-haul airplanes. A 3-year grace period is sufficient for operators to plan for the scribe line inspections, and will allow for timely data collection for use in developing final action and determining whether this AD should be revised in the future. We have not changed the supplemental NPRM regarding this issue. However, operators may request an AMOC in accordance with the procedures in paragraph (m) of this AD.

Request To Extend Compliance Time for Certain Inspection Locations

Boeing requests that we extend the compliance time for certain inspection locations. Boeing reports that recent engineering analysis has revealed slightly reduced stresses in the STA 1283 butt joint. The resulting greater analytical threshold and interval value would allow for longer compliance times to inspect this location on certain airplanes. Boeing therefore requests that we add the following new paragraph as an additional exception to the service bulletin specifications in the proposed AD:

(i) This AD required performing the inspections of the STA 1283 butt joint on Groups 3 and 4 from STR–4.6 to STR–6 per Service Bulletin 747–53A2563 Revision 2, dated January 3, 2008, except allows this location to be treated as Area 2 rather than Area 1 for the initial inspection threshold and allows a LRTS inspection interval of 1500 flight cycles rather than 500.

Boeing states that this change would be reflected in a future revision to the service bulletin.

We agree with the request. However, since the time that Boeing submitted its comments, Boeing released Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, which incorporates the inspection and compliance times described above. Because the inspection and times are included in Revision 4 of this service bulletin and we propose to mandate the requirements contained in Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, this inspection is no longer a difference between the service bulletin specification and this supplemental NPRM. We have not changed the supplemental NPRM in this regard.

Request To Revise Reporting Requirement

Boeing requests that we revise the reporting requirement, which is paragraph (i) in the NPRM (now identified as paragraph (j) in this supplemental NPRM), to require operators to also report the maximum scribe depth on each airplane. Boeing states that this pertinent information would allow Boeing to better assess the accuracy of the 747 inspection program, and is necessary for Boeing to re-evaluate the accuracy of the overall scribe analysis methodology.

We agree with the request to revise the reporting requirement. The scribe depths must be determined during the mandated inspections, and this intent was included in the phrase in paragraph (i) of the original NPRM that reads "description of any discrepancies found." However, we have included additional language to clarify the reporting requirement by specifying that scribe depths are to be included in the required report. Including the depth information with the required report, therefore, would create no additional burden to operators. We have revised paragraph (j) of this supplemental NPRM to clarify this requirement.

Request To Limit Data Collection

BA requests that we limit the data collection. BA questions the need for the reporting requirement specified in

the NPRM. BA claims that the reports, as they are being submitted, would soon provide Boeing with adequate data to reassess the proposed actions and compliance times (based on the number of affected airplanes). BA recommends that provisions be included in the NPRM to ensure that Boeing and the FAA will reassess the data in a timely manner, after a statistically significant number of data points have been collected—with a view to revising the service bulletin and AD compliance times based on actual data.

We infer that BA is requesting that we eventually remove the reporting requirement from the AD. We partially agree. We do not agree to remove the reporting requirements from this supplemental NPRM. The original NPRM and this supplemental NPRM clearly note that this AD is considered interim action. Data received from the required reporting will be evaluated to help determine whether further rulemaking will be necessary or whether the inspection requirements can be relaxed. We have not changed the supplemental NPRM in this regard.

Request To Provide Additional Detail in the Service Bulletin

KLM notes that Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008, provides for some relief for un-inspectable locations, but states that this relief is insufficient for several structural details, and no alternative inspection method is available. The commenter provides no further information.

We infer that KLM is requesting that we delay issuance of the final rule until Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008, is revised to provide the structural details. Boeing has released Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, which provides more information regarding inspections. We have revised this supplemental NPRM to refer to Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, as the appropriate source of service information in this supplemental NPRM.

Request To Stipulate Credit Conditions

Boeing states that paragraph (j) of the NPRM indicated that operators could receive credit for inspections done before the effective date of the AD according to the Boeing Alert Service Bulletin 747–53A2563, dated March 29, 2007. But, as Boeing notes, operators who inspected using Boeing Alert Service Bulletin 747–53A2563, dated March 29, 2007, would not likely have inspected STA 1283, a new area of inspection added in Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008, and included in the original NPRM. Boeing therefore requests that we revise paragraph (j) of the NPRM (which is now paragraph (l) of the supplemental NPRM) to include the following provisions related to this inspection area:

- Required inspection for scribe damage of the STA 1283 butt joint on Groups 3 and 4 from STR–4.5 to STR–6 in accordance with Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008;
- A compliance time within 1,500 flight cycles after the effective date of this AD or before the threshold cycle limit corresponding to the Area 2 inspection, whichever occurs later; and
- Repair of scribe damage as specified in paragraph (f) of the NPRM (which is now paragraph (g) of the supplemental NPRM).

We agree, for the reasons provided by the commenter. However, since the time that Boeing submitted its comments, it issued Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, which incorporates the inspection and compliance times described above along with other inspections required for airplanes that were previously inspected in accordance with earlier issues of this service bulletin. Because the referenced inspection and times are included in Revision 4 of this service bulletin and we propose to mandate the requirements contained in Revision 4 of this service bulletin, there is no need to state this requirement specifically. Rather, we have added a new paragraph (k) to this supplemental NPRM to require certain actions done in accordance with Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, for airplanes that were previously inspected in accordance with Boeing Alert Service Bulletin 747–53A2563, dated March 29, 2007; Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008; or Boeing Service Bulletin 747–53A2563, Revision 3, dated June 11, 2009.

Request To Add Exception to Inspection Requirements

BA notes that the Relevant Service Information section of the NPRM describes conditions under which certain inspections would not be required. BA requests that we revise that section to include the following additional exception:

> Where the airplane has been delivered without fillet sealed lap joints (*i.e.,* is not included in the listing in the SB appendix E), and the operator has not applied sealant to the lap joints during any maintenance or paint input, then lap joint inspections are not required.

The commenter adds that this condition is provided in Boeing Service Bulletin 747–53A2563, Revision 2, dated January 3, 2008.

We do not agree with the request. Appendix E of this service bulletin identifies airplanes that had fillet seals installed during production. Several operators subsequently removed the fillet seals, and a listing was needed to ensure that those airplanes delivered with fillet seals would be inspected. In addition, fillet seals might have been applied to lap joints at various times and subsequently removed, and maintenance records might not contain sufficient detail for such an exclusion. We have not changed the supplemental NPRM regarding this issue.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Explanation of Change to Costs of Compliance

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

Costs of Compliance

There are about 1,038 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspections	1,020 to 1,140	$85	$86,700 to $96,900	219	$18,987,300 to $21,221,100.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2008–0107; Directorate Identifier 2007–NM–087–AD.

Comments Due Date

(a) We must receive comments by September 24, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SP, and 747SR series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010.

Subject

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

Unsafe Condition

(e) This AD results from reports of scribe lines found at lap joints and butt joints, around external doublers and antennas, and at locations where external decals had been cut. We are issuing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin and cause sudden decompression of the airplane.

Compliance

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

Inspection

(g) At the applicable times specified in Tables 1 through 21 and Table 25 in paragraph 1.E., "Compliance," of Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, except as provided in paragraph (h) of this AD, do detailed inspections for scribe lines of affected lap and butt splices, wing-to-body fairing locations, and external repair and cutout reinforcement areas, and do all applicable related investigative and corrective actions, by accomplishing all actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, except as provided by paragraph (i) of this AD.

Note 1: The inspection exemptions noted in paragraph 1.E., "Compliance," of Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, apply to this AD provided that the operator meets the requirements stated in each applicable exemption.

Exceptions to Service Bulletin Specifications

(h) Where Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, specifies a compliance time after the date on that revision or any previous issue of Boeing Service Bulletin 747–53A2563, this AD requires compliance within the specified compliance time after the effective date of this AD. Where Boeing Service Bulletin 747–53A2563 states that airplane flight-cycle time shall be calculated after the "issue date on this service bulletin," this AD requires the airplane flight-cycle time to be calculated as of the effective date of this AD.

(i) Where Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, specifies to contact Boeing for appropriate action, accomplish applicable actions before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

Report

(j) At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD: Submit a report of the findings (both positive and negative) of the inspections required by paragraphs (g) and (k) of this AD. Send the report to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. The report must contain, at a minimum, the inspection results, a description of any discrepancies including maximum scribe depth, the airplane serial number, and the number of flight cycles and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Actions Accomplished According to Previous Issues of Service Bulletin

(k) For airplanes that have been inspected before the effective date of this AD in accordance with the service information specified in Table 1 of this AD: At the applicable times specified in Tables 22 through 24 and Tables 26 through 29 of paragraph 1.E., "Compliance," of Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, except as provided in paragraph (h) of this AD, do detailed inspections for scribe lines of affected lap splices, butt splices and cargo door lap splices; and do detailed and surface high frequency eddy current or ultrasonic inspections of scribe lines, and do all applicable related investigative and corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2563, Revision 4, dated May 6, 2010, except as provided by paragraph (i) of this AD.

TABLE 1—CREDIT SERVICE BULLETINS

Document	Revision	Date
Boeing Alert Service Bulletin 747–53A2563	Original	March 29, 2007.
Boeing Service Bulletin 747–53A2563	2	January 3, 2008.
Boeing Service Bulletin 747–53A2563	3	June 11, 2009.

Note 2: Boeing Alert Service Bulletin 747–53A2563, Revision 1, dated November 8, 2007, was published with omitted information. Actions accomplished according to Boeing Alert Service Bulletin 747–53A2563, Revision 1, dated November 8, 2007, are not considered acceptable for compliance with this AD.

(l) Actions accomplished before the effective date of this AD according to the service information identified in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD, except as required by paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Nicholas Han, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

Issued in Renton, Washington, on August 13, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–21523 Filed 8–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0866; Directorate Identifier 2010–SW–065–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 427 Helicopters

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

ACTION: Notice of proposed rulemaking (NPRM).

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

Tail rotor driveshaft hanger bearing bracket part number (P/N) 427–044–223–101 has been found cracked due to fatigue. It has been determined that the fatigue cracking was initiated by a tooling mark left during manufacture.

The existence of tooling marks on the bracket could lead to bracket failure, loss of tail rotor drive and, consequently, loss of control of the helicopter.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 14, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5122; fax: (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0866; Directorate Identifier

2010–SW–065–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Transport Canada, which is the aviation authority for Canada, has issued AD No. CF–2010–17, dated June 2, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Tail rotor driveshaft hanger bearing bracket part number (P/N) 427–044–223–101 has been found cracked due to fatigue. It has been determined that the fatigue cracking was initiated by a tooling mark left during manufacture.
>
> The existence of tooling marks on the bracket could lead to bracket failure, loss of tail rotor drive and, consequently, loss of control of the helicopter.

The MCAI requires you to rework the tail rotor driveshaft hanger bearing bracket. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bell Helicopter has issued Alert Service Bulletin No. 427–09–29, REV A, dated November 17, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 30 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $10,200, or $340 per product.

In addition, we estimate that any necessary follow-on actions would require parts costing $5,034, for a cost of $5,034 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada Limited: Docket No. FAA–2010–0866; Directorate Identifier 2010–SW–065–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 427 helicopters, all serial numbers (SNs), certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 65: Tail Rotor Drive.

Reason

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

> Tail rotor driveshaft hanger bearing bracket part number (P/N) 427–044–223–101 has been found cracked due to fatigue. It has been determined that the fatigue cracking was initiated by a tooling mark left during manufacture.
>
> The existence of tooling marks on the bracket could lead to bracket failure, loss of tail rotor drive and, consequently, loss of control of the helicopter.

The MCAI requires you to rework the tail rotor driveshaft hanger bearing bracket.

Actions and Compliance

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

(1) Applicable to SNs 56001 through 56073, and 56077: Within 30 days after the effective date of this AD, inspect both sides of the hanger bracket, P/N 427–044–223–101, for cracks following Bell Helicopter Alert Service Bulletin No. 427–09–29, REV A, dated November 17, 2009.

(i) If no cracks are found during the inspection required by paragraph (f)(1) of this AD, before further flight rework both sides of the hanger bracket, P/N 427–044–223–101, following Bell Helicopter Alert Service Bulletin No. 427–09–29, REV A, dated November 17, 2009.

(ii) If cracks are found during the inspection required by paragraph (f)(1) of this AD, before further flight replace the hanger bracket, P/N 427–044–223–101, with a new hanger bracket, P/N 427–044–223–101, that has been reworked following Bell Helicopter Alert Service Bulletin No. 427–09–29, REV A, dated November 17, 2009.

(2) Applicable to all SNs: As of the effective date of this AD, you may not install replacement tail rotor driveshaft hanger bracket, P/N 427–044–223–101, unless the bracket has been inspected and found free of cracks and has been reworked following Bell Helicopter Alert Service Bulletin No. 427–09–29, REV A, dated November 17, 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5122; fax: (817) 222–5961. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Transport Canada AD No. CF–2010–17, dated June 2, 2010; and Bell Helicopter Alert Service Bulletin No. 427–09–29, REV A, dated November 17, 2009, for related information.

Issued in Fort Worth, Texas, on August 19, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–21582 Filed 8–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0865; Directorate Identifier 2010–SW–061–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Models 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 Helicopters

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

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been determined that new tail rotor disc assembly Part Number (P/N) 101584–1 or –2, sold through Bell Helicopter Spares beginning March 2009, as an alternate to P/N 32721–1, does not conform to the approved configuration. Operating a helicopter with disk assembly P/N 101584–1 or –2 installed may result in loss of control of the helicopter.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 14, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5122; fax: (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0865; Directorate Identifier 2010–SW–061–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Transport Canada, which is the aviation authority for Canada, has issued AD No. CF–2010–07, dated February 24, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

It has been determined that new tail rotor disc assembly Part Number (P/N) 101584–1 or –2, sold through Bell Helicopter Spares

beginning March 2009, as an alternate to P/N 32721–1, does not conform to the approved configuration. Operating a helicopter with disk assembly P/N 101584–1 or –2 installed may result in loss of control of the helicopter.

This directive mandates the removal from service tail rotor disc assembly P/N 101584–1 and –2.

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

Relevant Service Information

Bell Helicopter has issued Alert Service Bulletin No. 206–09–123, REV A, dated June 10, 2009, and Alert Service Bulletin No. 206L–09–157, REV A, dated June 10, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 2,847 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $260 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $982,215 or $345 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada Limited: Docket No. FAA–2010–0865; Directorate Identifier 2010–SW–061–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following model and serial number airplanes, certificated in any category.

Model	Serial No. (S/N)
206A	004 through 660 and 672 through 715.
206B	All S/Ns including those converted from Model 206A.
206L	45004 through 45153 and 46601 through 46617.
206L–1	45154 through 45790.
206L–3	51001 through 51612.
206L–4	All S/Ns.

Subject

(d) Air Transport Association of America (ATA) Code 65: Tail Rotor Drive.

Reason

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

It has been determined that new tail rotor disc assembly Part Number (P/N) 101584–1 or –2, sold through Bell Helicopter Spares beginning March 2009, as an alternate to P/N 32721–1, does not conform to the approved configuration. Operating a helicopter with disk assembly P/N 101584–1 or –2 installed may result in loss of control of the helicopter.

This directive mandates the removal from service tail rotor disc assembly P/N 101584–1 and –2.

Actions and Compliance

(f) Unless already done, do the following actions following Bell Helicopter Alert Service Bulletin No. 206–09–123, REV A, dated June 10, 2009; and Bell Helicopter Alert Service Bulletin No. 206L–09–157, REV A, dated June 10, 2009, as applicable.

(1) Check the helicopter maintenance records to determine if a disc assembly, part number (P/N) 101584–1 or –2, is installed. Do this check within the next 30 days after the effective date of this AD or within the next 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first.

(2) If, during the maintenance records check required in paragraph (f)(1) of this AD,

you cannot positively determine that a P/N 101584–1 or –2 disc assembly is not installed, within the next 30 days after the effective date of this AD or within the next 100 hours TIS after the effective date of this AD, whichever occurs first, inspect the tail rotor driveshaft system to determine if P/N 101584–1 or –2 is installed.

(3) If, during the maintenance records check required in paragraph (f)(1) of this AD or during the inspection required in paragraph (f)(2) of this AD, you can positively determine that a P/N 101584–1 or –2 disc assembly is not installed, no further action is required. Before further flight, make an entry in the log book showing compliance with this AD.

(4) If, during the maintenance records check required in paragraph (f)(1) of this AD or during the inspection required in paragraph (f)(2) of this AD, you can positively determine that a P/N 101584–1 or –2 disc assembly is installed, within the next 30 days after the effective date of this AD or within the next 100 hours TIS after the effective date of this AD, whichever occurs first, replace disc assembly P/N 101584–1 or –2 with disc assembly P/N 32721–1.

(5) As of the effective date of this AD, do not install disc assembly P/N 101584–1 or –2.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5122; fax: (817) 222–5961. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Transport Canada, AD No. CF–2010–07, dated February 24, 2010; Bell Helicopter Alert Service Bulletin No. 206–09–123, REV A, dated June 10, 2009; and Bell Helicopter Alert Service Bulletin No. 206L–09–157, REV A, dated June 10, 2009, for related information.

Issued in Fort Worth, Texas, on August 19, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–21589 Filed 8–27–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9190–1]

RIN–2060–AQ45

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The EPA is announcing a public hearing to be held for the proposed rule "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan" which will publish in the near future in the **Federal Register**. The hearing will be held on September 14, 2010, in Arlington, VA.

DATES: The public hearing will be held on September 14, 2010.

ADDRESSES: The September 14, 2010 hearing will be held at the EPA Ariel Rios East building, Room 1153, 1301 Constitution Avenue, Washington, DC 20460. The public hearing will convene at 9 a.m. (Eastern standard time) and continue until the later of 6 p.m. or 1 hour after the last registered speaker has spoken. The EPA will make every effort to accommodate all speakers that arrive and register. A lunch break is scheduled from 12:30 p.m. until 2 p.m. Because this hearing is being held at U.S. government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons. The EPA Web Site for the rulemaking, which includes the proposal and information about the public hearing, can be found at: *http://www.epa.gov/nsr.*

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504–03), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, e-mail address: *long.pam@epa.gov* (preferred method for registering), no later than September 10, 2010. If using e-mail, please provide the following information: Time you wish to speak (morning, afternoon, evening), name, affiliation, address, e-mail address, and telephone and fax numbers.

Questions concerning the August 2010 proposed rule should be addressed to Ms. Lisa Sutton, U.S. EPA, Office of Air Quality Planning and Standards, New Source Review Group, (C504–03), Research Triangle Park, NC 27711, telephone number (919) 541–3450, e-mail at *sutton.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: The public hearing is to provide the public an opportunity to present oral comments regarding EPA's proposed "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," which proposes a Federal Implementation Plan to apply in any state that is unable to submit, by its deadline, a corrective State Implementation Plan revision to ensure that the state has authority to issue permits under the Clean Air Act's New Source Review Prevention of Significant Deterioration program for sources of greenhouse gases.

Public hearing: The proposal for which EPA is holding the public hearing will publish in the near future in the **Federal Register** and is available at: *http://www.epa.gov/nsr* and also in the rulemaking docket. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at

the public hearing. Written comments on the proposed rule must be postmarked by October 14, 2010, 30 days after the September 14, 2010 hearing.

Commenters should notify Ms. Long if they will need specific equipment, or if there are other special needs related to providing comments at the hearing. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail or CD) or in hard copy form.

The hearing schedule, including lists of speakers, will be posted on EPA's Web Site *http://www.epa.gov/nsr.* Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan" under Docket ID No. EPA–HQ–OAR–2010–0107 (available at *http://www.regulations.gov*).

As stated previously, the proposed rule will publish in the near future in the **Federal Register** and is available at *http://www.epa.gov/nsr* and in the rulemaking docket.

Dated: August 24, 2010.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–21691 Filed 8–27–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 246, and 252

Defense Federal Acquisition Regulation Supplement (DFARS); Warranty Tracking of Serialized Items, DFARS Case 2009–D018

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a policy memorandum of the Undersecretary of Defense for Acquisition, Technology, and Logistics dated February 6, 2007, that required definition of the requirements to track warranties for items subject to Item Unique Identification in the Item Unique Identification registry. This proposed rule stresses that the enforcement of warranties is essential to the effectiveness and efficiency of DoD's material readiness.

DATES: Comments on this proposed rule should be submitted in writing to the address shown below on or before October 29, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D018, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2009–D018 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

The Undersecretary of Defense for Acquisition, Technology, and Logistics issued a policy memorandum dated February 6, 2007, that instructed the Director, Defense Procurement and Acquisition Policy, to define the requirements to track warranties for items subject to Item Unique Identification (IUID) in the IUID registry. This proposed rule addresses the requirement to more effectively track warranties for IUID items.

The tracking of warranties, from the identification of the requirement to the expiration date of the warranted item, will enhance significantly the ability of DoD to take full advantage of warranties when they are part of an acquisition. Presently, DoD lacks the enterprise capability that would provide visibility and accountability of warranty data associated with acquired goods. The capability to track warranties will result in—

(a) Reduced costs;

(b) Ability to recognize benefits included for free;

(c) Ability to compare performance against Government specified warranties;

(d) Increased level of insurance for purchased goods;

(e) Sufficient durations of warranties for specific goods;

(f) Ability to identify and enforce warranties (*e.g.,* against fraudulent vendors, or for criminal actions).

DoD proposes the following changes:

- Revise DFARS 211.274–2(a)(4), Policy for unique item identification, to add any warranted item.
- Revise the definitions of "acceptance" and "defect," and add a definition for "warranty tracking" at DFARS 246.701.
- Add DFARS 246.710(5) to include provision and clause prescriptions 252.246–70XX and 252.246–70YY.
- Revise DFARS 252.211–7003, Item Identification and Valuation, definition of "issuing agency."
- Add provision 252.246–70XX, Notice of Warranty Tracking of Serialized Items.
- Add clause 252.246–70YY, Warranty Tracking of Serialized Items.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 20, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603 *et seq.* A copy of the analysis may be obtained from the point of contact specified herein. The objective of this rule is for DoD to develop a more effective way to track warranties for items subject to Item Unique Identification (IUID). Presently, DoD lacks the enterprise capability that would provide visibility and accountability of warranty data

associated with acquired goods. The tracking of warranties, from the identification of the requirement to the expiration date of the warranted item, will enhance significantly the ability of DoD to take full advantage of warranties when they are part of an acquisition, resulting in–

(a) Reduced costs;

(b) Ability to recognize benefits included for free;

(c) Ability to compare performance against Government specified warranties;

(d) Sufficient durations of warranties for specific goods.

DoD will address the requirement to track warranties with the following DFARS provision and clause:

(1) 252.246–70XX, Notice of Warranty Tracking of Serialized Items;

(2) 252.246–70YY, Warranty Tracking of Serialized Items.

In FY 2009, DoD issued approximately 16,000 solicitations that use warranty clauses. In response to those solicitations, approximately 76,000 offers would be received (66,000 from small business, 10,000 from other than small business). Of that total, DoD estimates that 50% of the time the Government will provide the required warranty information for 38,000 offers (33,000 small and 5,000 other than small businesses). Therefore, 33,000 small entities would be impacted by the rule.

DoD invites comments from small concerns and other interested parties on the impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS case 2009–D018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies because the proposed rule does contain information collection requirements. DoD invites comments on the following aspects of the proposed rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement; Warranty Tracking of Serialized Items.

Type of Request: New collection.

Number of Respondents: 38,000.

Responses per Respondent: Approximately 1.4.

Annual Responses: 54,000.

Average Burden Per Response: 0.5 hour.

Annual Public Burden Hours: 27,000.

Needs and Uses: DoD needs the information required by 252.246–70XX and 252.246–70YY in order to properly track the warranty of serialized items.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD(AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD(AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

List of Subjects in 48 CFR Parts 211, 246, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 211, 246, and 252 as follows:

1. The authority citation for 48 CFR parts 211, 246, and 252 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS

2. Amend section 211.274–2 by revising paragraphs (a)(4)(i) and (a)(4)(ii) and by adding paragraph (a)(4)(iii) as follows:

§ 211.274–2 Policy for unique item identification.

* * * * *

(a) * * *

(4) * * *

(i) Any DoD serially managed subassembly, component, or part embedded within a delivered item;

(ii) The parent item (as defined in 252.211–7003(a)) that contains the embedded subassembly, component, or part; and

(iii) Any warranted item.

* * * * *

PART 246—QUALITY ASSURANCE

3. Revise section 246.701 to read as follows:

§ 246.701 Definitions.

As used in this subpart—

Acceptance, as used in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services, includes the execution of an official document (*e.g.,* DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Warranty tracking is defined in the clause 252.246–70YY, Warranty Tracking of Serialized Items.

4. Amend section 246.710 by revising the section heading and adding paragraph (5) to read as follows:

§ 246.710 Solicitation provision and contract clauses.

* * * * *

(5)(i) In addition to 252.211–7003, Item Unique Valuation, which is prescribed in 211.274–5(a), use the following provision and clause in solicitations and contracts when it is anticipated that the resulting contract will include a warranty for serialized items:

(A) 252.246–70XX, Notice of Warranty Tracking of Serialized Items (include only if offerors will be required to enter data with the offer); and

(B) 252.246–70YY, Warranty Tracking of Serialized Items.

(ii) If the Government specifies a warranty, then the contracting officer shall request the requiring activity to

provide information to ensure that Table I in the clause 252.246–70YY is populated with data specifying the Government's required warranty provision by contract line item number, subline item number, or exhibit line item number prior to solicitation. In such case, do not include 252.246–70XX in the solicitation.

(iii) If the Government does not specify a warranty, include 252.246–70XX in the solicitation. The contractor may offer a warranty and shall then populate Table I in the clause 252.246–70YY, as appropriate, as part of its offer as required by 252.246–70XX.

(iv) All warranty tracking information that is indicated with a single asterisk (*) in Table I in the clause 252.246–70YY shall be completed prior to award. Data indicated with two asterisks (**) may be completed on or after the time of award, but no later than the time of delivery.

(v) The contractor shall provide warranty repair source instructions (Table II in the clause 252.246–70YY) no later than the time of delivery.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 252.211–7003 by revising the clause date to read "(XXX 2010)" and, at paragraph (a), by revising the definition of "issuing agency" to read as follows:

§ 252.211–7003 Item Identification and Valuation.

* * * * *

(a) * * *

* * * * *

Issuing agency means an organization responsible for assigning a non-repeatable identifier to an enterprise (*e.g.,* Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/ Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at *http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm.*

6. Add section 252.246–70XX to read as follows:

§ 252.246–70XX Notice of Warranty Tracking of Serialized Items.

As prescribed in 246.710(5)(i)(A), use the following provision:

Notice of Warranty Tracking of Serialized Items (XXX 2010)

(a) *Definition.* "Unique item identifier" and "warranty tracking" are defined in the clause at 252.246–70YY, Warranty Tracking of Serialized Items.

(b) *Reporting of data for warranty tracking and administration.* The offeror shall provide the information required by Table I in the clause at 252.246–70YY (indicated by a single asterisk (*)), on each contract line item number (CLIN), subline item number (SLIN), or exhibit line item number (ELIN) for warranted items. The offeror shall provide all information required by Table II no later than when the warranted items are presented for receipt and/or acceptance. The "Warranty Item Unique Item Identifier (UII)" data category may also be completed in conjunction with Table II. The offeror shall submit the data for warranty tracking to the Contracting Officer.

(End of provision)

7. Add section 252.246–70YY to read as follows:

As prescribed in 246.710(5)(i)(B), use the following clause:

Warranty Tracking of Serialized Items (XXX 2010)

(a) *Definitions.* As used in this clause—

DoD Item Unique Identification (IUID) Registry means the central repository for IUID information that serves as an acquisition gateway to identify what the uniquely identified tangible item is, how and when it was acquired, the initial Government unit cost of the item, current custody (Government or Contractor), and how it is marked.

Duration means the warranty period. This period may be a stated period of time, amount of usage, or the occurrence of a specified event, after formal acceptance of delivery, for the Government to assert a contractual right for the correction of defects.

Enterprise means the entity (*e.g.,* a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

First use means the initial or first time use of a product by the Government.

Fixed expiration means the date the warranty expires and the Contractor's obligation to provide for a remedy or corrective action ends.

Installation means the date a unit is inserted into a higher level assembly in order to make it operational.

Issuing agency means an organization responsible for assigning a non-repeatable identifier to an enterprise (*e.g.,* Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at *http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm.*

Item type means a coded representation of the description of the item being warranted, consisting of the codes C—component procured separate from end item, S—subassembly procured separate from end item or subassembly, E—embedded in component, subassembly or end item parent, and P—parent end item.

Starting event means the event or action that initiates the warranty.

Serialized item means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

Unique item identifier means a set of data elements marked on an item that is globally unique and unambiguous.

Usage means the quantity and an associated unit of measure that specifies the amount-of a characteristic subject to the contractor's obligation to provide for remedy or corrective action such as a number of miles, hours, or cycles.

Warranty administrator means the organization specified by the guarantor for managing the warranty.

Warranty guarantor means the enterprise that provides the warranty under the terms and conditions of a contract.

Warranty repair source means the organization specified by a warranty guarantor for receiving and managing warranty items that are returned by a customer.

Warranty tracking means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

(b) *Reporting of data for warranty tracking and administration.* The Contractor shall provide the following information (see Table I) on each contract line item number (CLIN), subline item number (SLIN), or exhibit line item number (ELIN) for warranted items. The Contractor shall provide all information required by Table II no later than when the warranted items are presented for receipt and/or acceptance. The "Warranty Item Unique Item Identifier (UII)" data category may also be completed in conjunction with Table II. The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

TABLE I—WARRANTY TRACKING INFORMATION

CLIN, SLIN, OR ELIN *	Item type (a) **	Warranty item UII **	Warranty term						Warranty administrator enterprise identifier code type (f) **	Warranty administrator enterprise identifier (g) **	Warranty guarantor enterprise identifier code type (h) **	Warranty guarantor enterprise identifier code type (i) **
			Starting event (b) *	Usage (c)*		Duration (d)*		Fixed expiration (e)				
				Quantity *	Unit *	Quantity *	Unit *	Date *				

*To be completed by the requiring activity, if warranty is specified by the Government. Otherwise, all offerors are to complete as part of their offers.
**To be completed by the Contractor at the time of award (if known), otherwise at the time of delivery.

Notes:

(a) Item type—

C—component procured separate from end item

S—subassembly procured separate from end item or subassembly

E—embedded in component, subassembly or end item parent

P—parent end item

(b) Starting event—

Acceptance (A)

Installation (I)

First use (F)

Other (O)

Warranty term—Choose one of the following:

(c) Usage (for warrantees where effectivity is in terms of operating time or cycles)

(d) Duration (for warrantees that expire after a set period of time)

(e) Date (for warrantees with a fixed expiration date)

(f) Warranty administrator enterprise identifier code type—

0–9—GS1 Company Prefix

D—CAGE

LB—ATIS–0322000

LH—EHIBCC

RH—HIBCC

UN—DUNS

(g) Warranty administrator enterprise identifier—A non-repeatable identifier code assigned to an enterprise by an issuing agency [*e.g.,* Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix , Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number, European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC).

(h) Warranty guarantor enterprise identifier code type—

0–9—GS1 Company Prefix

D—CAGE

LB—ATIS–0322000

LH—EHIBCC

RH—HIBCC

UN—DUNS

TABLE II—WARRANTY REPAIR SOURCE INSTRUCTIONS

Contract Number:

Warranty repair source enterprise identifier code type (j) **	Warranty repair source enterprise identifier (k) **	Shipping address for warranty returns							Instructions (r) **
		Name (l) **	Address line 1 (m) **	Address line 2 **	City/ county (n) **	State/ province (o) **	Postal code (p) **	Country (q) **	

For each warranty repair source enterprise identifier listed above, include the shipping address for returning warranty items, or include instructions for accessing a Web site to obtain prepaid shipping labels for returning warranty items to the designated source of warranty repair.

**To be completed by the Contractor at the time of award and/or at the time of delivery.

(j) Warranty repair source enterprise identifier code type—

0–9—GS1 Company Prefix

D—CAGE

LB—ATIS–0322000

LH—EHIBCC

RH—HIBCC

UN—DUNS

(k) Warranty repair source enterprise identifier—A non-repeatable identifier code assigned to an enterprise by an issuing agency [*e.g.,* Dun & Bradstreet's Data

Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number, European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC).

(c) *Reservation of Rights.* The terms of this clause shall not be construed to limit the Government's rights or remedies under any other contract clause.

(End of clause)]

[FR Doc. 2010–21358 Filed 8–27–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 100618274–0377–01]

RIN 0648–AY92

Fisheries in the Western Pacific; Hawaii Bottomfish and Seamount Groundfish; Management Measures for Hancock Seamounts to Rebuild Overfished Armorhead

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would continue a moratorium on fishing for bottomfish and seamount groundfish at the Hancock Seamounts until the overfished U.S. stock of pelagic armorhead (*Pseudopentaceros wheeleri*) is rebuilt. This proposed rule would also reclassify the management area around the Hancock Seamounts as an ecosystem management area. The intent of the continued moratorium is to facilitate rebuilding of the armorhead stock, and the intent of the ecosystem management area is to facilitate research on armorhead and other seamount groundfish.

DATES: Comments on the amendment must be received by October 14, 2010.

ADDRESSES: Comments on the proposed rule, identified by 0648–AY92, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*; or
- Mail: Mail written comments to Michael D. Tosatto, Acting Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of these two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. Comments will be posted for public viewing after thecomment period has closed. All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "NA" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Amendment 2 to the Fishery Ecosystem Plan for the Hawaiian Archipelago contains an environmental assessment and background information, and is available from *www.regulations.gov* and from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or web site *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: This document is also available at *www.gpoaccess.gov/fr*.

Fishing for pelagic armorhead is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP). Armorhead are overfished as a result of over-exploitation by foreign vessels in international waters, dating back to at least the 1970s. Although there has never been a U.S. fishery targeting this fish, continued exploitation outside the U.S. Exclusive Economic Zone (EEZ) by foreign fleets has kept the stock in an overfished condition.

The Hancock Seamounts are the only known armorhead habitat within the EEZ. These seamounts lie west of 180° W. and north of 28° N., to the northwest of Kure Atoll in the Northwestern Hawaiian Islands. The Council and NMFS have responded to the overfished condition of armorhead with a series of four, 6–year domestic fishing moratoria at the Hancock Seamounts, beginning in 1986. The current 6–year moratorium expires on August 31, 2010. Although there would be a short time period between the expiration of the current moratorium and implementation of this rule, if approved, the likelihood of a new Hawaii-based domestic armorhead fishery developing is discountable. The Hancock Seamounts are a relatively small and isolated fishing area, and the costs of starting up fishing operations to enter this fishery would be prohibitive relative to the potential fishing yield during the very short time that the area would be open. Additionally, existing domestic North Pacific trawl vessels would not be allowed to fish at Hancock Seamounts because trawls are prohibited fishing gear in the U.S. Pacific Islands.

From July 2009 to August 2010, the Council developed Amendment 2 to the Hawaii FEP to rebuild the armorhead stock pursuant to the Magnuson-Stevens Act; the amendment is currently undergoing Secretarial review (75 FR 51237, August 19, 2010). The Council recommended in Amendment 2 that NMFS establish a minimum rebuilding time of 35 years for the U.S. portion of the armorhead stock. The Council also recommended that NMFS classify the portion of the EEZ surrounding the Hancock Seamounts as an ecosystem management area, and extend the moratorium at Hancock Seamounts until the stock is rebuilt. In response to these recommendations, NMFS developed this proposed rule to implement the latter two recommendations.

The Council and NMFS recognize that, because less than five percent of the armorhead habitat lies within U.S. jurisdiction, rebuilding of the stock must be accomplished through coordinated international management. Nonetheless, a prohibition on all armorhead catches in U.S. waters would provide the maximum protection available for armorhead stocks in U.S. waters.

The current moratorium applies to all bottomfish and seamount groundfish, and the proposed moratorium would continue to do so. While only armorhead are overfished, other bottomfish and seamount groundfish are caught with the same gear type as armorhead. Opening the Hancock Seamount fishery to non-armorhead fish would increase the likelihood of incidental catches of armorhead, resulting in possible delays to rebuilding the stock. In addition, the fishing gear (anchors, weighted lines, and hooks) used to target non-armorhead fish, or lost on fishing

grounds, has the potential to impact armorhead essential fish habitat and habitat areas of particular concern. For these reasons, all bottomfish and seamount groundfish have been included in past fishing moratoria at Hancock Seamounts, and are also included in this proposed rule.

NMFS anticipates that further research will be necessary for the Regional Administrator to determine when armorhead stocks are rebuilt and could support a domestic fishery. Specifically, research must be conducted to obtain better information about armorhead life history, ecological information such as food-web dynamics and essential fish habitat, population dynamics, and fishery-independent information at the population level. Additionally, the Council has identified the need for habitat mapping and characterization, and fish distribution and abundance by habitat types. This information is necessary to determine whether the status of the stock could support a domestic fishery at Hancock Seamounts in the future.

Classifying the portion of the EEZ around the Hancock Seamounts as an ecosystem management area would acknowledge the significance of the area as a monitoring and research site for ecological studies on armorhead and other bottomfish and seamount groundfish and their associated benthic habitats. The ecosystem management area would also serve as the area in which the maximum U.S. contribution to rebuilding of the armorhead stock would occur. Hancock Seamounts could also serve as a control site for future research that assesses the effectiveness of management actions being considered by other nations and regional fishery management organizations, such as seasonal closures and bank-specific closures in international waters adjacent to Hancock Seamounts.

Additional information and analyses may be found in Amendment 2, available from the Council (see **ADDRESSES**).

To be considered, comments on this proposed rule must be received by October 14, 2010, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the fishery ecosystem plan for Hawaii, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

Pelagic armorhead (*Pseudopentaceros wheeleri*) is a management unit species under the Fishery Ecosystem Plan for the Hawaiian Archipelago. Armorhead are overfished as a result of over-exploitation by foreign vessels in international waters. There has never been a U.S. fishery targeting this fish, but continued exploitation by foreign fleets has kept the stock in an overfished condition. The Western Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) have responded to the overfished condition of armorhead with a series of four, 6–year domestic fishing moratoria, beginning in 1986, around the Hancock Seamounts. These seamounts are the only known armorhead habitat in the U.S. Exclusive Economic Zone (EEZ). The current 6–year moratorium expires on August 31, 2010.

The Council developed Amendment 2 to the Hawaii fishery ecosystem plan to establish rebuilding requirements pursuant to Magnuson-Stevens Act section 304(e)(4). Amendment 2 would: (1) continue a moratorium on fishing for armorhead and other bottomfish and seamount groundfish until the armorhead stock is rebuilt; (2) establish a minimum rebuilding time of 35 years for the U.S. portion of the armorhead stock; and (3) classify the portion of the EEZ around the Hancock Seamounts as an ecosystem management area.

The fishing moratorium continues to apply to all bottomfish and seamount groundfish. While only armorhead are overfished, other bottomfish and seamount groundfish are caught with the same gear type as armorhead. Thus, opening the fishery to non-armorhead fish increases the likelihood of incidental catches of armorhead, resulting in possible delays to rebuilding the stock. In addition, the fishing gear (anchors, weighted lines, and hooks) used to target non-armorhead fish, or lost on fishing grounds, may impact armorhead essential fish habitat and habitat areas of particular concern. For these reasons, all bottomfish and seamount groundfish have been included in the fishing moratoriums at Hancock Seamounts in the past, and are also included in this action. The intent of the continued moratorium and minimum rebuilding time is to facilitate rebuilding of the armorhead stock, and the intent of the ecosystem management area is to facilitate research on armorhead and other seamount groundfish. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. All fishing vessels having the potential to participate in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of $ 4.0 million). There are no additional small entities that could be affected by this proposed rulemaking.

There has never been any U.S. fishery at Hancock Seamounts, nor has there been any recent interest in starting one, so this proposed rule would not affect the profitability of fishing businesses under Federal management. Therefore, there are no disproportionate economic impacts from this proposed rule based on home port, gear type, or relative vessel size. For these reasons, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, based on the pre-existing status of U.S. fishery for armorhead and other bottomfish and seamount groundfish at Hancock Seamounts.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 665

Armorhead, Bottomfish, Fisheries, Fishing, Hancock Seamounts, Hawaii, Seamount groundfish.

Dated: August 24, 2010.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.202, revise paragraph (a)(3) to read as follows:

§ 665.202 Management subareas.

* * * * *

(3) Hancock Seamounts Ecosystem Management Area means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180° W. long. and north of 28° N. lat.

* * * * *

3. In § 665.204, add new paragraph (k) to read as follows:

§ 665.204 Prohibitions.

* * * * *

(k) Fish for or possess any Hawaii bottomfish or seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area, in violation of § 665.209.

4. Revise § 665.209 to read as follows:

§ 665.209 Fishing moratorium at Hancock Seamounts.

Fishing for, and possession of, Hawaii bottomfish and seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area is prohibited until the Regional Administrator determines that the armorhead stock is rebuilt.

[FR Doc. 2010–21537 Filed 8–27–10; 8:45 am]

BILLING CODE S

Notices

Federal Register
Vol. 75, No. 167
Monday, August 30, 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

Grain Inspection, Packers and Stockyards Administration

Designation for the Amarillo, TX; Cairo, IL; State of Louisiana; State of North Carolina; Belmond, IA; State of New Jersey; and State of New York Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (USGSA): Amarillo Grain Exchange, Inc. (Amarillo); Cairo Grain Inspection Agency, Inc. (Cairo); Louisiana Department of Agriculture and Forestry (Louisiana); North Carolina Department of Agriculture (North Carolina); and D. R. Schaal Agency, Inc. (Schaal).

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

ADDRESSES: Karen W. Guagliardo, Branch Chief, Review Branch, Compliance Division, GIPSA, USDA, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Karen W. Guagliardo, 202–720–8262 or *Karen.W.Guagliardo@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the March 31, 2010, **Federal Register** (75 FR 16068), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by the agencies named above. Applications were due by April 30, 2010. GIPSA received no applications for the areas presently serviced by Amarillo, Cairo, and North Carolina and subsequently requested applications for these areas in the June 25, 2010, **Federal Register** (75 FR 36348). Applications for this announcement were due by July 26, 2010.

Amarillo, Cairo, Louisiana, North Carolina, and Schaal were the sole applicants for designations to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l) of the USGSA (7 U.S.C. 79(f)) and determined that Amarillo, Cairo, Louisiana, North Carolina, and Schaal are qualified to provide official services in the geographic areas specified in the March 31, 2010, and June 25, 2010, **Federal Register** for which they applied. These designation actions to provide official services in the specified areas are effective October 1, 2010, and terminate on September 30, 2013.

Interested persons may obtain official services by calling the telephone numbers listed below:

Official agency	Headquarters location and telephone	Designation start	Designation end
Amarillo	Amarillo, TX (806–372–2152) Additional Location: Guymon, OK.	10/1/2010	9/30/2013
Cairo	Cairo, IL (618–734–1316)	10/1/2010	9/30/2013
Louisiana	Baton Rouge, LA (318–428–5453) Additional Locations: Jonesville, Oak Grove, Opelousas, LA.	10/1/2010	9/30/2013
North Carolina	Raleigh, NC (919–733–4491) Additional Location: Elizabeth City, NC.	10/1/2010	9/30/2013
Schaal	Belmond, IA (641–444–7292)	10/1/2010	9/30/2013

Section 7(f)(1) of the USGSA authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)(1)).

Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Authority: 7 U.S.C. 71–87k.

Marianne Plaus,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–21456 Filed 8–27–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Horticultural Research Institute, Inc. of Washington, DC, an exclusive license to U.S. Patent No. 7,066,995, "Compositions and Films Comprised of Avian Feather Keratin," issued on June 27, 2006.

DATES: Comments must be received on or before September 29, 2010.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology

Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Horticultural Research Institute, Inc. of Washington, DC has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2010–21491 Filed 8–27–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on September 21st, 2010 and will begin at 6 p.m.

ADDRESSES: The meeting will be held in Alpine County at the Alpine Early Learning Center, 100 Foothill Road, Markleeville, CA 96120.

FOR FURTHER INFORMATION CONTACT: Daniel Morris, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Carson Ranger District, 1536 S. Carson Street, Carson City, NV 89701 (775) 884–8140; E-mail *danielmorris@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and recommend finding allocation for proposed projects (2) Determine timeframes for the next round of project proposals (3) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 19, 2010.

Genny E. Wilson,

Designated Federal Officer.

[FR Doc. 2010–21414 Filed 8–27–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Owensboro, KY; Bloomington, IL; Iowa Falls, IA; Casa Grande, AZ; Fargo, ND; Grand Forks, ND; and Plainview, TX Areas; Request for Comments on the Official Agencies Servicing These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on March 31, 2011. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: J. W. Barton Grain Inspection Service, Inc. (Barton); Central Illinois Grain Inspection, Inc. (Central Illinois); Central Iowa Grain Inspection Service, Inc. (Central Iowa); Farwell Commodity and Grain Services, Inc. (Farwell Southwest); North Dakota Grain Inspection Service, Inc. (North Dakota); Northern Plains Grain Inspection Service, Inc. (Northern Plains); and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATES: Applications and comments are due by September 29, 2010.

ADDRESSES: Submit applications concerning this notice using only one of the following methods:

- *Internet:* Apply using FGISonline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) by clicking on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISonline customer number and USDA eAuthentication username and password prior to applying. Submit comments at *http://www.regulations.gov.* Instructions for submitting and reading comments are detailed on the site.
- *Hand Delivery/Courier Address:* Karen W. Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Mail:* Karen W. Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Karen W. Guagliardo, 202–720–7312 or *Karen.W.Guagliardo@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 7(f)(1) of the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Areas Open for Designation:

Barton

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Indiana, Kentucky, and Tennessee are assigned to this official agency:

In Indiana:

- Clark, Crawford, Floyd, Harrison, Jackson, Jennings, Jefferson, Lawrence, Martin, Orange, Perry, Scott, Spencer, and Washington Counties.

In Kentucky:

- Bounded on the North by the northern Daviess, Hancock, Breckinridge, Meade, Hardin, Jefferson, Oldham, Trimble, and Carroll County lines;
- Bounded on the East by the eastern Carroll, Henry, Franklin, Scott, Fayette, Jessamine, Woodford, Anderson, Nelson, Larue, Hart, Barren, and Allen County lines;
- Bounded on the South by the southern Allen and Simpson County lines; and
- Bounded on the West by the western Simpson and Warren County lines; the southern Butler and Muhlenberg County lines; the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

In Tennessee:

- Bounded on the North by the northern Tennessee State line from Sumner County east;
- Bounded on the East by the eastern Tennessee State line southwest;
- Bounded on the South by the southern Tennessee State line west to the western Giles County line; and
- Bounded on the West by the western Giles, Maury, and Williamson County lines North; the northern Williamson County line east; the western Rutherford, Wilson, and Sumner County lines north.

Central Illinois

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to this official agency:

- Bounded on the North by State Route 18 east to U.S. Route 51; U.S. Route 51 south to State Route 17; State Route 17 east to Livingston County; the Livingston County line east to State Route 47;
- Bounded on the East by State Route 47 south to State Route 116; State Route 116 west to Pontiac, which intersects with a straight line running north and south through Arrowsmith to the southern McLean County line;
- Bounded on the South by the southern McLean County line; the eastern Logan County line south to State Route 10; State Route 10 west to the Logan County line; the western Logan County line; the southern Tazewell County line; and
- Bounded on the West by the western Tazewell County line; the western Peoria County line north to Interstate 74; Interstate 74 southeast to State Route 116; State Route 116 north to State Route 26; State Route 26 north to State Route 18.

Central Illinois' assigned geographic area does not include the East Lincoln Farmers Grain Co. (Lincoln, Logan County, Illinois) grain elevator, which is located inside Central Illinois' area. Springfield Grain Inspection, Inc. presently services and will continue to service this elevator.

Central Iowa

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to this official agency:

- Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines.
- Bounded on the East by the eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;
- Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;
- Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: AgVantage FS, Chapin, Franklin County; and Five Star Coop, Rockwell, Cerro Gordo County (located inside D.R. Schaal Agency's area).

Central Iowa's assigned geographic area does not include the following grain elevators, which are located inside Central Iowa's area:

- West Central Coop in Boxholm, Boone County, Iowa (serviced by Sioux City Inspection and Weighing Service Company) and
- Hancock Elevator in Elliot, Montgomery County, Iowa and two Hancock elevators in Griswold, Cass County, Iowa (serviced by Omaha Grain Inspection Service, Inc.).

Farwell Southwest

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Arizona and California, except those export port locations within these areas, which are serviced by GIPSA, are assigned to this official agency:

- Maricopa, Pinal, Santa Cruz, and Yuma Counties, Arizona.
- Imperial, Riverside, and San Diego Counties, California.

North Dakota

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Illinois, Minnesota and North Dakota, are assigned to this official agency:

In Illinois:

- Bounded on the East by the eastern Cumberland County line; the eastern Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line;
- Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River;
- Bounded on the West by the Mississippi River north to the northern Calhoun County line; and
- Bounded on the North by the northern and eastern Calhoun County lines; the northern and eastern Jersey County lines; the northern Madison County line; the western Montgomery County line north to a point on this line that intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

In Minnesota:

- Koochiching, St. Louis, Lake, Cook, Itasca, Norman, Mahnomen, Hubbard, Cass, Clay, Becker, Wadena, Crow Wing, Aitkin, Carlton, Wilkin, and Otter Tail Counties, excluding those export port locations served by GIPSA.

In North Dakota:

- Bounded on the North by the northern Steele County line from State Route 32 east; the northern Steele and Traill County lines east to the North Dakota State line;
- Bounded on the East by the eastern North Dakota State line;

• Bounded on the South by the southern North Dakota State line west to State Route 1; and

• Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

Northern Plains

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Minnesota and North Dakota, are assigned to this official agency:

In Minnesota:

• Kittson, Roseau, Lake of the Woods, Marshall, Beltrami, Polk, Pennington, Red Lake, and Clearwater Counties.

In North Dakota:

• Bounded on the North by the North Dakota State line;

• Bounded on the East by the North Dakota State line south to the southern Grand Forks County line;

• Bounded on the South by the southern Grand Forks and Nelson County lines west to the western Nelson County line; the western Nelson County line north to the southern Benson County line, the southern Benson and Pierce County lines west to State Route 3; and

• Bounded on the West by State Route 3 north to the southern Rolette County line; the southern Rolette County line west to the western Rolette County line north to the North Dakota State line.

Plainview

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the State of Texas, are assigned to this official agency.

• Bounded on the North by the northern Deaf Smith County line east to U.S. Route 385; U.S. Route 385 south to FM 1062; FM 1062 east to State Route 217; State Route 217 east to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River southeast to the northern Briscoe County line and along the northern Hall County line east to U.S. Route 287; U.S. Route 287 southeast to the eastern Hall County line south to the northern Cottle County line; the northern Cottle County line east to the northern Hardeman County line;

• Bounded on the East by the eastern Hardeman and Fourd County lines to the northern Baylor and Archer County lines to the eastern Archer, Throckmorton, Shackelford, and Callahan County lines;

• Bounded on the South by the southern Callahan, Taylor, Nolan, Mitchell, Howard, Martin, and Andrews County lines; and

• Bounded on the West by the western Andrews, Gaines, and Yoakum County lines; the northern Yoakum and Terry county lines; the western Lubbock County line; the western Hale County line north to FM 37; FM 37 west to U.S. Route 84; U.S. Route 84 northwest to FM 303; FM 303 north to U.S. Route 70; U.S. Route 70 west to the Lamb County line; the western and northern Lamb County lines; the western Castro County line; the southern Deaf Smith County line west to State Route 214; State Route 214 north to the northern Deaf Smith County line.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning April 1, 2011, and ending March 31, 2014. To apply for designation or for more information, contact Karen W. Guagliardo at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Barton, Central Illinois, Central Iowa, Farwell Southwest, North Dakota, Northern Plains, and Plainview official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Karen W. Guagliardo at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicant will be designated.

Authority: 7 U.S.C. 71–87k.

Marianne Plaus,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–21460 Filed 8–27–10; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act; Notice of Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting cancellation.

SUMMARY: On August 19, 2010 (75 FR 51238–51239), the U.S. Commission on Civil Rights announced a business meeting to be held on Friday, August 27, 2010 via teleconference. On Wednesday, August 25, 2010, the meeting was cancelled. The decision to cancel the meeting was too close in time to the date and time of the meeting for the publication of a cancellation notice to appear in advance of the scheduled meeting date. The details of the cancelled meeting are:

DATE AND TIME: Friday, August 27, 2010; 11:30 a.m. EDT.

PLACE: Via Teleconference.
Public Dial In: 1–800–597–7623.
Conference ID # 94458880.

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda.

II. Program Planning.

- New Black Panther Party Enforcement Project.
- Sex Discrimination in Liberal Arts College Admissions Project.
- Timeline for Briefing Report on English-Only in the Workplace.

III. State Advisory Committee Issues.

- Wyoming SAC.

III. Approval of August 13 Meeting Minutes.

IV. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: August 26, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–21681 Filed 8–26–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 20–2009]

Foreign-Trade Zone 29; Application for Subzone Authority; Dow Corning Corporation; Extension of Rebuttal Period

Based on a request from Dow Corning Corporation (Dow Corning), the rebuttal period on the preliminary recommendation for the application for

subzone status at the Dow Corning facilities in Carrollton, Elizabethtown and Shepherdsville, Kentucky (75 FR 31763, 6/3/2010) is being extended to October 1, 2010 to allow additional time for the submission of rebuttal comments. Original submissions shall be sent to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230. An electronic copy shall be submitted to *ftz@trade.gov*.

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 24, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–21571 Filed 8–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Emory University, et al., Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 10–038. Applicant: Emory University, Atlanta, GA 30322. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 75 FR 46912, August 4, 2010.

Docket Number: 10–049. Applicant: Health Research Inc., New York State Department of Health, Menands, NY 12204–2719. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 75 FR 46912, August 4, 2010.

Docket Number: 10–051. Applicant: Regents of the University of California at San Diego, La Jolla, CA 92093–0651. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 75 FR 46912, August 4, 2010.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: August 24, 2010.

Gregory W. Campbell,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–21557 Filed 8–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100813341–0341–01]

RIN 0648–XX56

Endangered and Threatened Wildlife and Plants; Notice of 90–Day Finding for a Petition to List Georgia Basin Populations of China Rockfish and Tiger Rockfish as Endangered or Threatened

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

ACTION: Notice of 90–day petition finding.

SUMMARY: We (NMFS) received a petition to list Georgia Basin populations of China rockfish (*Sebastes nebulosus*) and tiger rockfish (*S. nigrocinctus*) as endangered or threatened species under the Endangered Species Act (ESA). We determine that the petition does not present substantial evidence to indicate that the petitioned action may be warranted.

ADDRESSES: Requests for copies of this petition regarding Georgia Basin China rockfish and tiger rockfish should be submitted to Chief, Protected Resources Division, NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. The petition and supporting data are available for public inspection, by appointment, Monday through Friday, at this address.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005 or Dwayne Meadows, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. On April 27, 2010, we received a petition from Mr. Sam Wright of Olympia, WA, to list Georgia Basin populations of China rockfish and tiger rockfish. For the purpose of this petition finding, we consider the Georgia Basin to include the inland marine waters of Puget Sound, the Strait of Georgia (north to the mouth of the Campbell River in British Columbia), and the portion of the Strait of Juan de Fuca east of the Victoria Sill (see our determination to list three distinct population segments of Puget Sound/Georgia Basin distinct population segments of rockfish, 75 FR 22276 (April 28, 2010)).

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531–1544) requires that we determine whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. In making this determination, we consider information submitted with and referenced in the petition, and all other information available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

In evaluating a petition, the Secretary considers whether it (1) describes past and present numbers and distribution of the species and any threats faced by the species (50 CFR 424.14(b)(2)(ii)); (2) provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)); and (3) is accompanied by appropriate supporting documentation (50 CFR 424.14(b)(2)(iv)).

The ESA defines "species" to include subspecies, or a distinct population segment of a vertebrate species (16 U.S.C. 1532(16)). The petitioner requested listing of the Georgia Basin populations of China rockfish and tiger rockfish. We evaluated whether the information provided or cited in the petition met our standard for "substantial information" as defined in joint ESA implementing regulations issued by NMFS and the U.S. Fish and Wildlife Service (50 CFR 424.14(b)). We also reviewed other information

available to us (currently within our files).

Previous Petition to list Puget Sound China Rockfish and Tiger Rockfish

We have received numerous petitions from Mr. Wright. In 1999, he petitioned us to list 18 species of Puget Sound marine fishes. Based on the information presented in that petition, and available in our files, we conducted status reviews on seven of those fishes. Information on the other eleven fishes (including China rockfish and tiger rockfish) was insubstantial and we therefore did not conduct status reviews (64 FR 33037; June 21, 1999).

Analysis of Petition

When reviewing a petition to list a species under the ESA, we consider information provided in the petition as well as information available in agency files. Mr. Wright's petition provides information from SCUBA surveys conducted in the Georgia Basin from 1998 to 2009. The petition points to the fact that there are few observations of China rockfish and tiger rockfish in these surveys. The petition provides no analysis to explain how these surveys can be interpreted to indicate either a low abundance level or a declining trend in abundance, either of which might be evidence of risk to the species. To the contrary, the petitioner acknowledges that adults of these two species tend to remain hidden in rocky habitats, which could make them difficult for SCUBA divers to observe.

In the absence of any analysis in the petition, we independently reviewed the information from these surveys and concluded they do not provide evidence of low abundance or a declining trend in abundance. The surveys are opportunistic sightings, reported by recreational or professional divers. There is no research protocol associated with these SCUBA reports, and the identification of individual fish species cannot be independently verified. Because the area surveyed and the level of effort are opportunistic and variable, because the reports are not collected in a systematic sampling design, and because adults of these species tend to hide in rocky habitats that could make them difficult to observe, we concluded that these survey results do not support inferences about population abundance.

The petition also provides a short description of the total recreational catch of these species over a 12–year period. The description appears under a heading in the petition entitled "Low Abundance Problem," but the petition provides no explanation of how this information reveals anything about the abundance of these two species. In the absence of an analysis in the petition, we independently reviewed the information on recreational catches of these two species available in our records. The proportion of these two species in the recreational rockfish catch is low, approximately 1 percent over the 12–year period. Standing alone, however, this low percentage does not indicate a low occurrence of these rockfish species relative to others because, as noted above, adults of the petitioned species tend to remain hidden in rocky habitat and are therefore less available to anglers. Nor does this information reveal anything about the absolute abundance of these two species. The catch information therefore does not indicate that abundance of these species is low enough to pose a threat to viability.

We agree with the petitioner's assertion that China rockfish and tiger rockfish typically utilize a small home range and experience low productivity. However, as the petitioner acknowledges, a small home range causes individuals to remain hidden in rocky habitat, where they may experience lower mortality, as a result of less frequent exposure to predators. Low productivity can be a risk factor in some instances. However, low productivity is not an indication of declining abundance (another risk factor) since it reflects a life history trade-off between fecundity and life span.

Finally, the petitioner fails to demonstrate how any of these individual pieces of information could be integrated into a trend analysis or some other type of analysis suggesting the two species are at risk.

The petitioner states "This would be an ideal time to conduct a status review of these two species since most of the required assessment work has already been done and there is an existing Biological Review Team (BRT)." While it is true that NMFS recently completed an ESA review of five rockfish species in the Puget Sound/Strait of Georgia (including the formation and use of a BRT), that is not a basis to conduct additional reviews under ESA section 4(b)(3)(A). NMFS did not look at information on China rockfish and tiger rockfish during its review earlier in the year, and the BRT was subsequently disbanded.

Petition Finding

After reviewing the petition, as well as information readily available to us, we have determined that the petition does not present substantial scientific information indicating the petitioned action may be warranted. If new information becomes available to suggest that Georgia Basin populations of China rockfish and tiger rockfish may warrant listing under the ESA, we will reconsider conducting a status review.

References

A complete list of all references cited herein is available upon request (see ADDRESSES section).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 24, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–21536 Filed 8–27–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council will hold a meeting to discuss topics related to the National Export Initiative, and advice from the President's Export Council as to how to promote U.S. exports, jobs, and growth.

DATES: September 16, 2010 at 9:30 a.m. (EDT).

ADDRESSES: The President's Export Council will convene its next meeting via live webcast on the Internet at *http://whitehouse.gov/live.*

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–1124, e-mail: *Marc.Chittum@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The President's Export Council was first established by Executive Order on December 20, 1973 to advise the President on matters relating to U.S. export trade and report to the President on its activities and on its recommendations for expanding U.S. exports. The President's Export Council was renewed most recently by Executive Order 13511 of September 29, 2009, for the two-year period ending September 30, 2011.

Public Submissions: The public is invited to submit written statements to the President's Export Council by C.O.B.

September 10, 2010 by either of the following methods:

Electronic Statements

Send electronic statements to the President's Export Council Web site at *http://trade.gov/pec/peccomments.asp;* or

Paper Statements

Send paper statements to J. Marc Chittum, President's Export Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230. All statements will be posted on the President's Export Council Web site (*http://trade.gov/pec/peccomments.asp*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Meeting minutes: Copies of the Council's meeting minutes will be available within 90 days of the meeting.

Dated: August 25, 2010.

J. Marc Chittum,

Executive Secretary, President's Export Council.

[FR Doc. 2010–21641 Filed 8–26–10; 4:15 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Preliminary Results of Antidumping Duty Changed-Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department of Commerce (the Department) is conducting a changed-circumstances review of the antidumping duty order on carbazole violet pigment 23 from India to determine whether Meghmani Pigments (Meghmani) is the successor-in-interest to Alpanil Industries (Alpanil) for determining antidumping duty liability. Because Meghmani did not respond to the Department's questionnaire, we have preliminarily determined that the use of facts available is appropriate to find that Meghmani is the successor-in-interest to Alpanil. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0180 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2009, the Department was notified by Alpanil that, on April 9, 2009, Alpanil's name was officially changed to Meghmani Pigments. In addition to a brief narrative explaining that there was no change in company ownership, management, production, office or factory location, employees, customers, or suppliers, a copy of "Form G" from the Gujurat State Registar of Firms was attached to demonstrate a record of all corporate changes for Alpanil/Meghmani since the incorporation of Alpanil in 1992. This attachment indicates that Alpanil's name change to Meghmani was recorded on April 9, 2009.

On March 9, 2010, in accordance with section 751(b) of the Act, 19 CFR 351.216, and 19 CFR 351.221(c)(3), we published in the **Federal Register** a notice of initiation of an antidumping duty changed-circumstances review. *See Carbazole Violet Pigment 23 from India: Initiation of Antidumping Duty Changed-Circumstances Review,* 75 FR 10759 (March 9, 2010) (*Initiation*). In this notice we indicated that we would conduct the changed-circumstances review in the context of the administrative review of the order covering the period December 1, 2008, through November 30, 2009.

On April 5, 2010, Meghmani withdrew its request for a review of its sales of merchandise subject to the antidumping duty order for the 2008/09 period in a timely manner. Therefore, in accordance with 19 CFR 351.213(d)(1), we rescinded the 2008/09 review with respect to CVP 23 from India produced and/or exported by Meghmani. *See Carbazole Violet Pigment 23 from India: Rescission of Administrative Review,* 75 FR 25209 (May 7, 2010). In the notice we indicated that, in accordance with 19 CFR 351.216(e), we intend to "issue final results of the changed-circumstances review within 270 days after the date on which we initiated the changed-circumstances review." *See* 75 FR at 25210.

On June 3, 2010, we sent a questionnaire to Meghmani requesting further information on the nature of the name change and whether additional changes had occurred. Although we granted Meghmani an extension of the deadline to respond, Meghmani did not respond to our questionnaire. Instead, on July 6, 2010, Meghmani notified the Department that it will not participate in the changed-circumstances review. Meghmani did not provide any reasons for its decision to withdraw its participation from the changed-circumstances review.

Since the initiation of the review, no other interested party has submitted comments.

Scope of the Order

The merchandise subject to the order is carbazole violet pigment 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3′,2′-m] [1] triphenodioxazine, 8,18-dichloro-5, 15-diethyl-5, 15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$. The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (e.g., pigment dispersed in oleoresins, flammable solvents, water) are not included within the scope of the order. The merchandise subject to the order is classifiable under subheading 3204.17.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Use of Adverse Facts Available

For the reason discussed below, we determine that the use of adverse facts available is appropriate for the preliminary results of the changed-circumstances review with respect to Meghmani.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i)

[1] The bracketed section of the product description, [3,2-b:3′,2′-m], is not business-proprietary information. In this case, the brackets are simply part of the chemical nomenclature.

of the Act, the Department shall use facts otherwise available in reaching the applicable determination.

Because Meghmani did not respond to our June 3, 2010, questionnaire, pursuant to sections 776(a)(2)(A) and (B) of the Act, we must rely entirely on facts available.

B. Application of Adverse Inferences for Facts Available

In selecting among the facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103–316, Vol. 1, 103d Cong. (1994), reprinted in 1994 U.S.C.C.A.N. 4040 (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. The SAA also instructs the Department to consider, in employing adverse inferences, "the extent to which a party may benefit from its own lack of cooperation." *Id.* Moreover, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27340 (May 19, 1997).

We find that, by failing completely to respond to our questionnaire in the changed-circumstances review concerning its name change, Meghmani withheld requested information and thus failed to cooperate to the best of its ability and, therefore, we may use an inference that is adverse to the interests of Meghmani.

C. Selection of Information Used as Facts Available

Where the Department applies an adverse inference because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 870.

Because we are making an adverse inference with regard to Meghmani based on the most recent information at our disposal, we preliminarily find that Meghmani is the successor-in-interest to Alpanil. In making the adverse inference, we have relied on the information placed on the record by Meghmani to determine that Meghmani is the successor-in-interest to Alpanil. See section 776(b) of the Act.[2] If we were to find that Meghmani is not the successor-in-interest to Alpanil, that would ensure that Meghmani would "obtain a more favorable result by failing to cooperate" because the all-others rate of 27.48 percent for the antidumping duty order would apply to Meghmani which is significantly lower than Alpanil's current rate of 58.90 percent. Accordingly, we preliminarily determine that Meghmani is the successor-in-interest to Alpanil and will assign to Meghmani the same treatment as Alpanil with respect to the antidumping duty proceeding.

Public Comment

Case briefs from interested parties may be submitted not later than 15 days after the date of publication of this notice of preliminary results of changed-circumstances review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited.

Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 15 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Such requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those discussed in the case briefs. If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish in the **Federal Register** a notice of the final results of this changed-circumstances review, including the results of its analysis of issues raised in any written briefs or at the hearing if requested.

As indicated in the *Initiation,* during the course of this changed-circumstances review we will not change any cash-deposit requirements on entries of merchandise subject to the antidumping duty order unless a change is determined to be warranted pursuant to the final results of this changed-circumstances review.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: August 23, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–21577 Filed 8–27–10; 8:45 am]

BILLING CODE 3510–DS–P

[2] Because the information upon which we are relying was obtained in the course of the review and is not secondary information, corrobation of this information is not necessary. *See* section 776(c) of the Act.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1703]

Reorganization of Foreign-Trade Zone 126 Under Alternative Site Framework; Reno, NV

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 Economic Development Authority of Western Nevada, grantee of Foreign-Trade Zone 126, submitted an application to the Board (FTZ Docket 26–2010, filed 4/19/2010) for authority to reorganize under the ASF with a service area of Carson City, Douglas and Storey Counties as well as portions of Churchill, Lyon and Washoe Counties, Nevada, in and adjacent to the Reno Customs and Border Protection port of entry, FTZ 126's existing Sites 1, 4–14 and 17 would be categorized as magnet sites, existing Sites 2, 3, 15 and 16 would be categorized as usage-driven sites, and the grantee proposes two additional usage-driven sites (Sites 18 and 19);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 21594–21595, 4/26/10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations 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 126 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 1, 4, 5, 7–14 and 17 if not activated by August 31, 2015, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 2, 3, 15–16 and 18–19 if no foreign-status merchandise is admitted for a bona fide customs purpose by August 31, 2013.

Signed at Washington, DC, this 19th day of August 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–21573 Filed 8–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 43—Battle Creek, MI; Site Renumbering Notice

Foreign-Trade Zone 43 was approved by the FTZ Board on October 19, 1978 (Board Order 138, 43 FR 50233, 10/27/78), and expanded on December 27, 1990 (Board Order 496, 56 FR 675, 1/8/91), January 3, 1992 (Board Order 554, 57 FR 1143, 1/10/92 and Board Order 555, 57 FR 1143, 1/10/92), and June 20, 1997 (Board Order 897, 62 FR 36044, 7/3/97 and Board Order 898, 62 FR 36043, 7/3/97).

FTZ 43 currently consists of 5 "sites" totaling 1,820 acres in the Battle Creek, Michigan area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 43 will be as follows: Site 1 (1,710 acres)—within the Fort Custer Industrial Park, Battle Creek; Site 2 (21 acres)—Columbia West Industrial Park, Battle Creek; Site 3 (23 acres)—6677 Beatrice Drive in Texas Township (Kalamazoo County); Site 4 (22 acres)—8250 Logistic Drive, Zeeland Township (Ottawa County), some 20 miles southwest of Grand Rapids; Site 5 (30 acres)—located within the 120-acre St. Joseph River Harbor Development Area adjacent to Lake Michigan in Benton Harbor (Berrien County), some 50 miles east of Battle Creek; Site 7 (14 acres)—72100 Highway M–40 South, Lawton (Van Buren County); and Site 8 (50,000 sq. ft.)—located at 1609 Parnall Road, Jackson (approved on a temporary basis until 1/31/11).

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 25, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–21572 Filed 8–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

National Security Agency

Notice of Intent To Grant an Exclusive License; Doar, Pekuin, Sall Limited Liability Company

AGENCY: National Security Agency, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant Doar, Pekuin, Sall Limited Liability Company a revocable, non-assignable, exclusive, license to practice the following Government-Owned invention as described in U.S. Patent No. 6,404,407 entitled "Ridge laser with oxidized strain-compensated superlattice of group III–V semiconductor." The invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the publication date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541.

FOR FURTHER INFORMATION CONTACT: Marian T. Roche, Director, Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541, telephone (443) 479–9569.

Dated: August 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–21540 Filed 8–27–10; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, September 15, 2010. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public and will be held at the West Trenton Volunteer Fire Company, located at 40 West Upper Ferry Road, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:30 a.m. and will consist of: A report by staff on the year's progress in implementing the 2004 Basin Plan; a report by a representative of the U.S. Army Corps of Engineers on the regional sediment management planning process; and a presentation by a representative of the U.S. Environmental Protection Agency on the Delaware Basin Source Water Collaborative Forum to take place on March 10, 2011.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Upper Southampton Municipal Authority, D–1965–023 CP–2.* An application for the renewal of a groundwater withdrawal project to supply the docket holder's water supply distribution system from existing Wells Nos. 3, 7, and 9. The docket holder requests an allocation of 13.53 million gallons per month (mgm). The project wells were constructed in the Stockton Formation and are located in the Southampton and Mill Creek Watersheds in Upper Southampton Township, Bucks County, Pennsylvania, in the Southeastern Pennsylvania Ground Water Protected Area (GWPA).

2. *Abington Township, D–1973–191 CP–4.* An application for renewal of the Abington Township Wastewater Treatment Plant (WWTP). The existing WWTP will continue to discharge treated effluent at an annual average flow of 3.91 million gallons per day (mgd) to Sandy Run, a tributary of the Wissahickon Creek, which drains to the

Schuylkill River. The facility is located in Upper Dublin Township, Montgomery County, Pennsylvania.

3. *Lower Moreland Township Authority, D–1987–052 CP–3.* An application for the renewal of an existing 0.279 mgd discharge from the Chapel Hill WWTP to an unnamed tributary of Southampton Creek at River Mile 109.75–16.1–0.71–0.5 (Delaware River-Pennypack Creek-Southampton Creek-UNT). The Chapel Hill WWTP is located in Lower Moreland Township, Montgomery County, Pennsylvania.

4. *Manwalamink Water Company, D–1989–050 CP–5.* An application for renewal of a groundwater withdrawal project to continue to supply up to 15 mgm of groundwater to the public water supply system from existing Wells Nos. 1, 2, 3, 5, and 6. Wells Nos. 1 and 2 are completed in the Pleistocene alluvial sand and gravel aquifer. Wells Nos. 3, 5, and 6 are completed in the Ridgeley-Coeymans Formation. The project is located in the Shawnee Creek and Delaware River watersheds in Smithfield Township, Monroe County, Pennsylvania within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters.

5. *Waste Management of Pennsylvania, D–1991–090–2.* An application for the renewal of a surface water withdrawal project to continue to supply 6 mgm of water to the applicant's landfill operations from the existing Intake on Manor Lake. The project is located in the Delaware River Watershed in Tullytown and Falls townships, Bucks County, Pennsylvania.

6. *Dan Schantz Farm and Greenhouses, D–1999–014–2.* An application for the renewal of a groundwater withdrawal project to continue the withdrawal of up to 3.57 mgm of water for irrigation and potable water supply from eight existing wells located in the Brunswick Formation. The project is located in the Hosensach-Indian Creek Watershed in Lower Milford Township, Lehigh County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Borough of Palmerton, D–1964–028 CP–2.* An application for approval of an upgrade of the existing Palmerton Borough WWTP. The upgrade includes replacing the existing contact stabilization activated sludge treatment system with a sequencing batch reactor (SBR) treatment system. No increase in the design annual average flow of 0.75 mgd is proposed. The WWTP will continue to discharge to the Aquashicola Creek, a tributary of the Lehigh River, and is located within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters. The facility is located in the Borough of Palmerton, Carbon County, Pennsylvania.

8. *Upper Gwynedd Township, D–1991–088 CP–6.* An application for approval of a modification of the Upper Gwynedd Township WWTP by the addition of a Biomag™ treatment process. The process entails adding magnetite to the aeration tanks in order to enhance solids settling and BOD and nutrient removal. The WWTP will continue to treat an average annual flow of 5.7 mgd and discharge treated sewage effluent to the Wissahickon Creek, a tributary of the Schuylkill River. The facility is located in Upper Gwynedd Township, Montgomery County, Pennsylvania.

9. *Plumstead Township, D–1997–033 CP–3.* An application to approve the addition of new Well No. LG–6 to the applicant's 11 existing wells and to increase the applicant's total groundwater withdrawal allocation from all wells from 15.31 million gallons per 30 days (mg/30 days) to 23.02 mgm. The project wells are located in the Brunswick Group, Lockatong Formation, and Stockton Formation in Plumstead Township, Bucks County, Pennsylvania within four subbasins of the Southeastern Pennsylvania Ground Water Protected Area: Tohickon-Deep Run, Tohickon-Geddes-Cabin Runs, Pine Run, and North Branch Neshaminy Creek.

10. *Borough of Bryn Athyn, D–2008–013 CP–3.* An application for approval to modify the existing 0.08 mgd New Church WWTP. Modifications include the addition of an equalization tank and a sludge holding tank, to be incorporated into the existing treatment design. The New Church WWTP will continue to discharge to an unnamed Tributary of Huntingdon Valley Creek at River Mile 109.75–12.02–1.11–0.17 (Delaware River-Pennypack Creek-Huntingdon Valley Creek-UNT) in Bryn Athyn Borough, Montgomery County, Pennsylvania. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

11. *Premcor Refining Group, D–2009–023–1.* An application for approval to increase the dredging depth of the facility's Entrance Channel and Turning Basin by five feet (to a new depth of −37 ft. MLW) and of the Pier Berthing Area by three feet (to a new depth of −40 ft. MLW). Approximately 650,000 cubic yards of new material will be dredged to allow for larger ships to traverse and dock at the facility. The project is located in Water Quality Zone 5 of the Delaware River at River Mile 61.8, in Delaware City, New Castle County, Delaware.

12. *Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station, D–2009–003–1.* An application for approval of a surface water withdrawal of up to 1,147.25 mgm from an existing surface water intake to be used for once-through non-contact cooling of land-based test sites (LBTS) for ship systems associated with the Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station (NSWCCD–SSES). The project intake is located in the Navy Reserve Basin, which is connected by a channel to the Schuylkill River, one-half mile upstream of the confluence of the Schuylkill and Delaware rivers. The Navy Reserve Basin is located in the City of Philadelphia, Pennsylvania, in the Schuylkill River Watershed.

13. *City of Dover, D–2009–014 CP–1.* An application for approval of an existing 0.360 mgd discharge of cooling tower blowdown from Outfalls Nos. 004 and 005 from the applicant's McKee Run Electric Generating Station. The project outfalls are located at River Mile 23.70–14.36–0.34 (Delaware River-Saint Jones River-McKee Run) in the City of Dover, Kent County, Delaware.

14. *Reading Area Water Authority—Maiden Creek, D–2010–009 CP–1.* An application for approval of an existing 4.3 mgd discharge from the Maiden Creek Water Filtration Plant (WFP). The discharge consists of filter backwash, pump seal water, chlorine analyses, and diesel generator cooling water from the WFP. Modifications to the backwash treatment process are proposed that will not increase the capacity of the WFP. The project discharges to Maiden Creek at River Mile 92.47–85.63–0.24 (Delaware River-Schuylkill River-Maiden Creek) in Ontelaunee Township, Berks County, Pennsylvania.

15. *Friesland Campino Domo, D–2010–010–1.* An application for approval of an existing groundwater withdrawal project to supply up to 31.95 mg/30 days of water to the applicant's vitamin production facility from existing Wells No. 1 and 2. The project is located in the Lower Walton Formation in the West Branch Delaware River Watershed in the Town of Delhi, Delaware County, New York, within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.

16. *Schuylkill County Municipal Authority—Deer Lake, D–2010–019 CP–1.* An application for approval to

expand the existing Deer Lake WWTP from a hydraulic design of 0.229 mgd to 1.0 mgd. Treated wastewater will continue to discharge to Pine Creek at River Mile 92.47–106.75–2.35 (Delaware River-Schuylkill River-Pine Creek) via Outfall No. 001, in West Brunswick Township, Schuylkill County, Pennsylvania.

17. *Gloucester County Utilities Authority—Pitman Golf Course, D–2010–029 CP–1.* An application for approval to construct and operate the 0.2 mgd Pitman Golf Course (PGC) WWTP. Effluent limits for the PGC WWTP will be based upon a 0.1 mgd discharge, the requested irrigation flow required at the PGC to avoid an increase in withdrawal from New Jersey Critical Water Supply Area 2. The PGC WWTP will receive flow from the Chestnut Branch Interceptor, an existing component of the wastewater collection system for the Gloucester County Utilities Authority (GCUA) WWTP, which discharges to Water Quality Zone 4 in the tidal Delaware River. After treatment, the effluent will be spray-irrigated on the Pitman Golf Course, located in Mantua Township, Gloucester County, New Jersey. Excess wastewater withdrawn from the Interceptor will be returned to the Interceptor for treatment at the GCUA's 27 mgd WWTP located in West Deptford, Gloucester County, New Jersey.

In addition to the standard business meeting items, consisting of adoption of the Minutes of the Commission's May 5 and July 14, 2010 business meetings, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, public hearings on water withdrawal and discharge projects, and public dialogue, the business meeting also will include a public hearing on a resolution concerning delegation of DRBC review of the Southport Marine Terminal project and consideration by the Commission of its proposal (published in February and March of 2010) to amend water charging rates.

Draft dockets scheduled for public hearing on September 15, 2010 can be accessed through the Notice of Commission Meeting and Public Hearing on the Commission's Web site, drbc.net, ten days prior to the meeting date. Additional public records relating to the dockets may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Note that conference items are subject to change and items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Please check the Commission's Web site, drbc.net, closer to the meeting date for changes that may be made after the deadline for filing this notice.

Individuals who wish to comment for the record on a hearing item or to address the Commissioners informally during the public dialogue portion of the meeting are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: August 24, 2010.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2010–21505 Filed 8–27–10; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before September 29, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: August 24, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title of Collection: Financial Report for Grantees under the Title III Part A, Title III Part B, and the Title V Program Endowment Activities and Endowment Challenge Grant Program.

OMB Control Number: 1840–0564.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 500.

Total Estimated Annual Burden Hours: 1,500.

Abstract: This financial reporting form will be utilized for Title III Part A, Title III Part B and Title V Program Endowment Activities and Title III Part C Endowment Challenge Grant Program. The purpose of this Annual Financial Report is to have the grantees report annually the kind of investments that have been made, the income earned and spent, and whether any part of the Endowment Fund Corpus has been spent. This information allows us to give technical assistance and determine whether the grantee has complied with the statutory and regulatory investment requirements.

Requests for copies of the information collection submission for OMB review

may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's website at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4345. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–21494 Filed 8–27–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of closed meeting agenda.

DATE AND TIME: Wednesday, September 1, 2010; 9:30 a.m.–12 p.m. EDT.

PLACE: U.S. Election Assistance Commission, 1201 New York Ave., NW., Washington, DC 20005.

AGENDA: Commissioners will hold a closed session discussion regarding a personnel matter on the appointment of an EAC general counsel.

* View EAC Regulations Implementing Government in the Sunshine Act. This meeting will be closed to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–21713 Filed 8–26–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13729–000]

Energy Exchange, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 23, 2010.

On May 11, 2010, and supplemented on July 20, 2010, Energy Exchange, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Tacoma Water Supply Hydroelectric Project (Tacoma Project). The Tacoma Project would be located within the city of Tacoma in Pierce County, Washington on an existing water conveyance system.

The Tacoma Project would consist of: (1) Two existing 60-inch diameter pipelines that originate at the Green River headworks at the lower end of the Green River Watershed; (2) two new powerhouses to be located at two points along the pipelines with one 1.8-megawatt (MW) turbine/generating unit at each; (3) a new three-phase transmission line (voltage to be determined) connecting to the nearest tie-in point of a local utility. The project would produce an estimated average annual generation of about 31,000 megawatt-hours.

Applicant Contact: Duane Pratt, Energy Exchange, Inc., 2711 Centerville Rd., Suite 120—PMB 7023, Wilmington, DE 19808; phone (208) 371–1285.

FERC Contact: Patrick Murphy (202) 502–8755.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13729–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21464 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–486–000]

Colorado Interstate Gas Company; Notice of Application

August 23, 2010.

Take notice that on August 12, 2010, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, pursuant to section 7(c) of the Natural Gas Act (NGA), filed in Docket No. CP10–486–000, an application authoring the construction and operation of an air blending station consisting of compression and appurtenant facilities located in Douglas County, Colorado. Specifically, CIG states that it proposes: (1) To construct and operate the Spruce Hill Air Blending Project facilities (Project); (2) to charge and collect, pursuant to section 4 of the NGA, the New Spruce Hill Gas Quality Control Surcharge for services to be rendered via the Project; (3) acceptance of certain potential non-conforming contract provisions contained in the executed Firm Transportation Service Agreements (FTSA) for the Project; and (4) exemption, for one of the FTSAs, from the collection of Fuel Gas. The proposed facilities will be constructed adjacent to CIG's existing Spruce Hill Meter Station. CIG estimates the cost of the facilities will be $15,900,000, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Ms. Susan C. Stires, Director, Regulatory Affairs, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 667–7514 or by fax at (719) 520–4697. or Mr. Craig V. Richardson, Vice President and General Counsel, Colorado Interstate Gas Company; P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 520–4370 or by fax at (719) 520–4898.

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 original plus seven copies of any filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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: September 13, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21467 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13721–000]

Energy Exchange, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

August 23, 2010.

On May 5, 2010, and amended on July 19, 2010, Energy Exchange, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Geren Island Hydroelectric Project (Geren Island Project). The Geren Island Project would be located within the city of Salem, Marion County, Oregon.

The Geren Island Project would consist of: (1) The city of Salem's existing water delivery system consisting of two reservoirs (Frazen and Fairmont) and two existing, 36- and 54-inch diameter steel pipelines; (2) three proposed powerhouses, each to contain a 0.37-megawatt-(MW) turbine-generating unit, with a total capacity of 1.11 MW, and (3) a new three-phase transmission line (voltage to be determined) to connect with the nearest tie-in point of a local power company grid system. The project would produce an estimated average annual generation of about 8,000 megawatt-hours.

Applicant Contact: Duane Pratt, Energy Exchange, Inc., 2711 Centerville Rd., Suite 120—PMB 7023, Wilmington, DE 19808; phone (208) 371–1285.

FERC Contact: Patrick Murphy (202) 502–8755.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13721–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21471 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–481–000; PF09–14–000]

Turtle Bayou Gas Storage Company, LLC; Notice of Application

August 20, 2010.

Take notice that on August 6, 2010, Turtle Bayou Gas Storage Company, LLC (Turtle Bayou), One Office Park Circle, Suite 300, Birmingham, Alabama 35223, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), for an order granting a certificate of public convenience to construct, own, operate, and maintain a new salt dome natural gas storage facility in two caverns and related facilities to be located in Chambers and Liberty Counties, Texas. Turtle Bayou is requesting blanket certificates under Part 284, Subpart G and Part 157, Subpart F of the Commission's regulations. Turtle Bayou also seeks for authorization of market based rates, approval of the pro forma tariff, and waivers of some of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Turtle Bayou's new storage project has been designed to provide approximately 12 billion cubic feet (Bcf) of working gas capacity with a maximum injection rate of up to 300 million cubic feet per day (MMcf/d) and a maximum withdrawal rate of 600 MMcf/d. Additionally, Turtle Bayou intends to construct a total of 13.1 miles of 24-inch diameter pipeline to deliver the natural gas to Natural Gas Pipeline Company of America and Texas Eastern Transmission, LP, as well as three reciprocating units to produce a total of 16,470 horsepower, leaching facilities, water supply wells, brine disposal wells, and two meter stations.

Any questions concerning this application may be directed to Jim Lindsay, Turtle Bayou Gas Storage Company, LLC, One Office Park Circle, Suite 300, Birmingham, Alabama 35223, at (877) 558–4521 or *JHL@wwminvest.com*; or Amy L. Baird, Jackson Walker L.L.P., 1401 McKinney Street, Suite 1900, Houston, Texas 77010, at (713) 752–4525 or *abaird@jw.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 seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven 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: September 10, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21465 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1810–001]

E. I. du Pont de Nemours and Company; Notice of Filing

August 20, 2010.

Take notice that on August 20, 2010, E. I. du Pont de Nemours and Company, filed clarification and an amendment to its July 19, 2010 petition for market-based rate authorization and request for waivers and blanket authorizations.

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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 August 30, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21469 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13720–000]

Energy Exchange, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 23, 2010.

On May 5, 2010, and amended on July 19, 2010, Energy Exchange, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Bear Creek Hydroelectric Project (Bear Creek Project). The Bear Creek Project would be located at Bear Creek Dam Municipal Water System within the city of Astoria, Clatsop County, Oregon. 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 Bear Creek Project would consist of: (1) The existing Bear Creek reservoir and two other reservoirs (known as # 2 and # 3); (2) the existing 21-inch diameter steel pipes; (3) two new powerhouses to be located at reservoir # 2 and reservoir # 3; (4) one 125-kilowatt (kw) turbine/generating unit, to be installed in each powerhouse; and (5) a new three-phase transmission line (voltage to be determined) to connect with the nearest tie-in point on a local electric grid system. The project would produce an estimated average annual generation of about 1,700 megawatt-hours.

Applicant Contact: Duane Pratt, Energy Exchange, Inc., 2711 Centerville Rd., Suite 120—PMB 7023, Wilmington, DE 19808; phone (208) 371–1285.

FERC Contact: Patrick Murphy (202) 502–8755.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13720–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21470 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–484–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

August 20, 2010.

Take notice that on August 12, 2010, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002–2761, filed in Docket No. CP10–484–000 an application, pursuant to sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA), as amended, for permission and approval to abandon by sale certain natural gas facilities located between Eugene Island Blocks 307 and

305, offshore Louisiana, to Dynamic Offshore Resources NS, LLC (Dynamic), a natural gas producer, under ANR's blanket certificate issued in Docket No. CP82–480–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

ANR proposes to abandon by sale approximately its Line 607 [2] (4.41 miles of 16-inch diameter pipeline) and appurtenances, located in Eugene Island Blocks 307, 306, and 305 to Dynamic, pursuant to their June 10, 2010, Pipeline Repair and Purchase and Sale Agreement. ANR states that it would cost an estimated $25,186,000 to replicate the Line 607 facilities today and that no construction or removal of facilities would be required in this proposal.

ANR further states that upon abandonment of the Line 607 facilities, Dynamic intends to operate the facilities as non-jurisdictional facilities and ANR further requests that the Commission consider the Line 607 Facilities to be non-jurisdictional gathering not subject to jurisdiction under Section 1(b) of the Natural Gas Act. However, this specific jurisdictional status request is beyond the scope of requests eligible for consideration under a blanket certificate and the prior notice process. As discussed in Commission Order No. 603–A, the Commission stated that "* * * we clarify that using either the automatic or prior notice authority of this section to abandon facilities by sale to a third party does not address the jurisdictional status of the facilities after the effective date of abandonment. The acquiring party is still responsible for seeking a determination, if one is desired, on the jurisdictional status of the facilities." [3]

Any questions concerning this application may be directed to Rene Staeb, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002, or via telephone at (832) 320–5215, facsimile (832) 320–6215, or e-mail *rene_staeb@transcanada.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERC OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21466 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice Regarding Staff Technical Conference

August 20, 2010.

California Independent System Operator Corporation	Docket Nos. ER10–1401–000, ER10–2191–000.
Green Energy Express LLC	Docket No. EL10–76–000
21st Century Transmission Holdings, LLC.	
Southern California Edison Company	Docket Nos. ER10–732–000, ER10–732–001.
Southern California Edison Company	Docket Nos. EL10–1–000, EL10–1–001, EL10–1–002.
Southern California Edison Company	Docket Nos. ER10–796–000, ER10–796–001.

[1] 20 FERC ¶ 62,595 (1982).

[2] ANR constructed the Line 607 facilities, which connect to ANR's Line 606, under authorization granted in Docket No. CP77–386–000 [59 FPC 2164 (1977)].

[3] *See Revision of Existing Regulations Under the Natural Gas Act,* Order No. 603–A, FERC Stats. & Regs. ¶ 31,081, at 30,936 (1999).

By order dated July 26, 2010, in Docket No. ER10–1401–000, the Federal Energy Regulatory Commission (Commission) directed staff to convene a technical conference regarding California Independent System Operator Corporation's (CAISO) proposed Revised Transmission Planning Process (RTPP).[1]

Pursuant to notices issued on August 3, 2010 and August 19, 2010, such conference will be held on August 24, 2010 at the Commission's headquarters at 888 First Street, Washington, DC 20426, beginning at 9 a.m. (EDT) in the Commission Meeting Room. The technical conference will be led by Commission staff. Commissioners may attend the conference.

We emphasize that the purpose of the technical conference is to discuss the issues raised by CAISO's proposed revisions to its Open Access Transmission Tariff (Tariff) to implement its RTPP in Docket No. ER10–1401–000 and obtain additional information regarding CAISO's proposal. However, because CAISO's RTPP filing presents issues that may be tangentially related to the proceedings in Docket Nos. ER10–732–000 and ER10–732–001; Docket Nos. EL10–1–000, EL10–1–001 and EL10–1–002; and Docket Nos. ER10–796–000 and ER10–796–001, in an abundance of caution, we hereby notify parties that the technical conference discussion may touch upon issues pending in these proceedings.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information on this conference, please contact Robert Petrocelli at *Robert.Petrocelli@ferc.gov* or (202) 502–8447, or Katie Detweiler at *Katie.Detweiler@ferc.gov* or (202) 502–6424.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21468 Filed 8–27–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *Cal. Indep. Sys. Operator Corp.,* 132 FERC ¶ 61,067 (2010).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9194–6]

Final Notice of Data Availability Concerning 2010 CAIR NO_X Annual Trading Program New Unit Set-Aside Allowance Allocations Under the Clean Air Interstate Rule Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: EPA is administering—under the Clean Air Interstate Rule (CAIR) Federal Implementation Plans (FIPs)—the CAIR NO_X Annual Trading Program (CAIRNOX) new unit set-aside allowance pools for Delaware and the District of Columbia. The CAIRNOX FIPs require the Administrator to determine each year by order the allowance allocations from the new unit set-aside for units in these jurisdictions whose owners and operators requested these allocations and to provide the public with the opportunity to object to the allocation determinations. On June 29, 2010, EPA issued a NODA setting forth such determinations for 2010 in the **Federal Register** and provided an opportunity for submission of objections. Through the NODA issued today, EPA is making available to the public the Agency's determinations, after considering all objections, of CAIRNOX allowance allocations and denials of such allocations for 2010 under the FIPs, as well as the data upon which the allocations and denials of allocations were based.

DATES: Under § 97.153(e), EPA must record, by December 1, 2010, the CAIRNOX new unit set-aside allowance allocations, consistent with this NODA, in the compliance accounts of units whose owners and operators successfully applied for a CAIRNOX new unit set-aside allowance allocation under the CAIR FIPs. *See* 40 CFR 97.153(e).

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Robert L. Miller, U.S. Environmental Protection Agency, CAMD (6204J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9077, and e-mail *miller.robertl@epa.gov*.

SUPPLEMENTARY INFORMATION: For more background and information regarding the purpose of the NODA, requirements for requesting and receiving CAIRNOX new unit set-aside allowances under the CAIR FIPs, procedures for allocating such allowances, application of requirements to individual CAIRNOX new unit set-aside allocation requests, and interpretation of the data upon which the CAIRNOX new unit set-aside allocations for 2010 and denials of allocations were based, *see* the June 29, 2010 NODA (75 Fed. Reg. 37433, June 29, 2010).

EPA received no objections to the determinations and data in the June 29, 2010 NODA. Therefore, EPA adopts the CAIRNOX new unit set-aside allocations set forth in the June 29, 2010 NODA.

EPA is not requesting objections to the data provided in this final NODA. This action constitutes a final action for determining the CAIRNOX new unit set-aside allowance allocations under § 97.142 and the CAIR FIPs for 2010.

Dated: August 20, 2010.

Drusilla Hufford,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2010–21547 Filed 8–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9194–8]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Chartered SAB to receive briefings from EPA and EPA Federal advisory committee representatives and to continue the SAB's discussions with EPA's Office of Research and Development (ORD) concerning EPA's strategic research directions. The SAB will also quality review one draft report.

DATES: The public meeting will be held on Tuesday, September 21, 2010 from 1:30 p.m. to 5:30 p.m. (Eastern Time) and Wednesday, September 22, 2010 from 9 a.m. to 2:30 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218, fax (202) 202–565–2098; or e-mail at *nugent.angela@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the EPA Science Advisory Board will hold a public meeting to receive briefings on Agency and Federal advisory committee science activities and continue the SAB's discussions with EPA's Office of Research and Development (ORD) concerning ORD's strategic research directions. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The chartered SAB is holding this meeting to receive briefings from: (a) Liaison members who chair other Federal advisory committees that address priority Agency science activities and (b) Agency representatives on EPA's Gulf Oil Spill science activities. In addition, EPA's Office of Research and Development (ORD) had requested SAB advice on strategic research directions over the next five years to support EPA's mission and priorities. The chartered SAB initiated discussions on November 9–10, 2009 (74 FR 52805–52806) and April 5–6, 2010 (75 FR 11883–11884) and provided an interim report on this topic, "Office of Research and Development Strategic Research Directions and Integrated Transdisciplinary Research" (EPA–SAB–10–010), available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/E989ECFC125966428525775B0047BE1A/$File/EPA-SAB-10-010-unsigned.pdf.* The SAB will continue its discussion with ORD about how to develop additional advice for EPA on this advisory topic. The SAB will also conduct a quality review of a draft report making recommendations to the Administrator concerning nominations for the Agency's Fiscal Year 2010 Scientific and Technological Achievement Awards.

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the September 21–22, 2010 meeting, interested parties should notify Dr. Angela Nugent, DFO, by e-mail no later than September 14, 2010. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the September 21–22, 2010 meeting should be received in the SAB Staff Office by than September 14, 2010, so that the information may be made available to the SAB for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 24, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–21546 Filed 8–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9194–5]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT represents diverse interests from academia, industry, non-governmental organizations, and local, State, and tribal governments. The Council will continue discussing the workplans it is developing to respond to EPA's request for advice on workforce issues the Agency is facing and how EPA can best address the needs of vulnerable populations. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a public meeting on Monday, September 27, 2010 from 9 a.m. to 5:30 p.m. and Tuesday, September 28, 2010 from 8:30 a.m. to 2 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in the Madison, Loews Hotel, 1177 15th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy New, Acting Designated Federal Officer, *new.nancy@epa.gov,* (202) 564–0464, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Nancy New at (202) 564–0464 or *new.nancy@epa.gov* by Tuesday, September 21, 2010. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-serve basis. Members of the public wishing to attend should contact Nancy New at (202) 564–0464 or *new.nancy@epa.gov* by September 21, 2010.

Meeting Access: For information on access or services for individuals with disabilities, please contact Nancy New at (202) 564–0464 or *new.nancy@epa.gov.* To request accommodation of a disability, please contact Nancy New, preferably 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 16, 2010.

Nancy New,

Acting Designated Federal Officer.

[FR Doc. 2010–21549 Filed 8–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9194–7]

Two Proposed CERCLA Section 122(g) Administrative Agreements for De Minimis Settlements for the Mercury Refining Superfund Site, Towns of Guilderland and Colonie, Albany County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of two proposed *de minimis* administrative agreements pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g). One settlement is between EPA and the Metropolitan Transportation Authority-New York City Transit Authority ("MTA–NYCTA") and Tyson Foods, Inc. ("Tyson"), hereinafter referred to as the "MTA-Tyson Settlement." The second settlement is between EPA and MG Automation and Controls Corporation ("MG") and Occidental Chemical Corporation ("OxyChem"), hereinafter referred to as the "MG-OxyChem Settlement." Both settlements pertain to the Mercury Refining Superfund Site ("Site") located in the Towns of Guilderland and Colonie, Albany County, New York. The MTA-Tyson Settlement requires that MTA–NYCTA pay $67,844.54, and that Tyson pay $32,684.84. The MG-OxyChem Settlement requires MG to pay $39,946.45 and OxyChem to pay $20,741.84. All payments will be paid to the EPA Hazardous Substance Superfund Mercury Refining Superfund Site Special Account. Each settling party's individual settlement amount is considered to be that party's fair share of cleanup costs incurred and anticipated to be incurred in the future, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of that future work at the Site. Each settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlements. EPA will consider all comments received and may modify or withdraw its consent to one or both of the settlements if comments received disclose facts or considerations that indicate that one or both of the proposed settlements are inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 29, 2010.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments on the MTA-Tyson settlement should reference the Mercury Refining Superfund Site, Index No. CERCLA–02–2010–2002. Comments on the MG-OxyChem settlement should reference the Mercury Refining Superfund Site, Index No. CERCLA–02–2010–2013. To request a copy of either settlement agreement, please contact Sharon E. Kivowitz at the address identified below. All comments should be submitted to Sharon E. Kivowitz at the address identified below.

FOR FURTHER INFORMATION CONTACT: Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3183. E-mail: *kivowitz.sharon@epa.gov.*

Dated: August 18, 2010.

Walter Mugdan,

Director, Emergency and Remedial Response Division, EPA, Region 2.

[FR Doc. 2010–21548 Filed 8–27–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 24, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 29, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0216.

Title: Section 73.3538, Application to Make Changes in an Existing Station; Section 73.1690(e), Modification of Transmission Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities, Not–for–profit institutions.

Number of Respondents and Responses: 650 respondents and 650 responses.

Estimated Hours per Response: 0.50 – 3 hours

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Total Annual Burden: 1,100 hours

Annual Burden Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303(r), 308, 309(j) and 337(e) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 73.3538(b)(1) of the Commission's rules requires a broadcast station to file an informal application to modify or discontinue the obstruction marking or lighting of an antenna supporting structure.

Section 73.1690(e) of the Commission's rules requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modification to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram must be retained at the transmitter site as long as the equipment is in use.

OMB Control Number: 3060–0248.

Title: Section 74.751, Modification of Transmission Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 400 respondents and 400 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 74.751(c) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. Section 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization. The notifications and certifications of equipment changes are used by FCC staff to ensure that the equipment changes made are in full compliance with the technical requirements of this section and the station authorizations and will not cause interference to other authorized stations.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–21386 Filed 8–27–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 24, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 29, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0316.

Title: 47 CFR Sections 76.1700, Records to Be Maintained Locally by Cable System Operators; 76.1703, Commercial Records on Children's Programs; 76.1704, Proof–of–Performance Test Data, 76.1707 Leased Access, 76.1711 Emergency Alert System (EAS) Tests and Activation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 3,000 respondents and 3,000 responses.

Estimated Hours per Response: 26 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 78,000 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment (s): No impact(s).

Needs and Uses: 47 CFR Section 76.1700 exempts cable television systems having fewer than 1,000 subscribers from the public inspection requirements contained in 47 CFR Sections 76.1701 (political file); 76.1702 (equal employment opportunity); 76.1703 (commercial records for

children's programming); 76.1704 (proof–of–performance test data); 76.1706 (signal leakage logs and repair records); and 76.1715 (sponsorship identifications).

The operator of every cable television system having 1,000 or more subscribers but fewer than 5,000 subscribers shall, upon request, provide the information required by §§ 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof–of–performance test data); 76.1706 (signal leakage logs and repair records); and 76.1715 (sponsorship identifications) but shall maintain for public inspection a file containing a copy of all records required to be kept by 47 CFR Section 76.1701 (political files).

The operator of every cable television system having 5,000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §§ 76.1701 (political file); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof–of–performance test data); 76.1706 (signal leakage logs and repair records); and 76.1715 (sponsorship identifications).

47 CFR Section 76.1700(b) requires that the public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such ass a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

47 CFR Section 76.1700(d) requires the records specified in paragraph (a) of this section shall be retained for the period specified in §§ 76.1701, 76.1702, 76.1704(a), and 76.1706.

47 CFR Section 76.1703 requires that cable operators airing children's programming must maintain records sufficient to verify compliance with 47 CFR Section 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

47 CFR Section 76.1704(a) requires the proof of performance tests required by § 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.

47 CFR 76.1704(b) requires the provisions of paragraph (a) of this section shall not apply to any cable television system having fewer than 1,000 subscribers, subject to the requirements of § 76.601(d).

47 CFR 76.1707 requires that if a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to § 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file.

47 CFR Section 76.1711 requires that records be kept of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of 47 CFR Part 11 and the EAS Operating Handbook. These records shall be kept for three years.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–21387 Filed 8–27–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, August 24, 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.

DATE & TIME: Thursday, August 26, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2010–14: Democratic Senatorial Campaign Committee by its counsel, Marc E. Elias, Esq., and Jonathan S. Berkon, Esq., of Perkins Coie, LLP.

Draft Advisory Opinion 2010–15: Pike for Congress by its counsel, Brian G. Svoboda, Esq., and Jonathan S. Berkon, Esq., of Perkins Coie, LLP.

Explanation and Justification and Final Rules on Coordinated Communications.

Explanation and Justification and Final Rules on Federal Election Activity.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–21408 Filed 8–27–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–13]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of the establishment of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act), the Federal Housing Finance Agency (FHFA) gives notice of a proposed Privacy Act system of records to replace a system of records issued by FHFA's predecessor agency, the Office of Federal Housing Enterprise Oversight (OFHEO) which was abolished July 30, 2009, and to fulfill FHFA's statutory requirement to collect the records. Upon the effective date of this notice, system OFHEO–07, "Mortgage Fraud System" published at 71 FR 6085 on February 6, 2006 will be deleted.

The proposed system named "Fraud Reporting System" (FHFA–6) will maintain information of fraud or possible fraud involving the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, "regulated entities"). This system is being established so that FHFA may carry out its statutory authority to require the regulated entities to report fraud or possible fraud upon discovery and in

furtherance of its authority for oversight of the safe and sound operations of the regulated entities. The deleted system of records is being replaced as a result of FHFA's statutory authority. The proposed system will include information formerly maintained in the system, OFHEO–07, "Mortgage Fraud System" published at 71 FR 6085 on February 6, 2006.

DATES: The new system of records will become effective on October 12, 2010 without further notice unless comments necessitate otherwise. FHFA will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before September 29, 2010.

ADDRESSES: Submit comments to FHFA only once, identified by "2010–N–13," using any one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include "Comments/No. 2010–N–13," in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include "Comments/No. 2010–N–13" in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/No. 2010–N–13, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/No. 2010–N–13, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: John Major, Privacy Act Officer, *john.major@fhfa.gov,* 202–408–2849, or David A. Lee, Senior Agency Official for Privacy, *david.lee@fhfa.gov,* 202–408–2514 (not toll-free numbers), Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

Instructions: FHFA seeks public comments on the proposed new system of records and will take all comments into consideration before issuing the final notice. *See* 5 U.S.C. 552a(e)(4) and (11). In addition to referencing "Comments/No. 2010–N–13," please reference the title and number of the system of records your comment addresses: "Fraud Reporting System" (FHFA–6).

Posting and Public Availability of Comments: All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

II. Introduction

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) and transferred to FHFA the supervisory and oversight responsibilities over the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, regulated entities). FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner and carry out their public policy missions. The OFHEO and the Federal Housing Finance Board were abolished on July 30, 2009, one year after the enactment of HERA.[1]

Section 1379E of the Safety and Soundness Act (section 1379E) (12 U.S.C. 4642(a)) subjects the regulated entities to both fraud reporting and internal control requirements. Under this statutory provision, the Director of FHFA must require a regulated entity to submit a timely report upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. Additionally, the Director must require each regulated entity to establish and maintain procedures designed to discover any such transactions.

This notice informs the public of FHFA's proposal to establish and maintain a new system of records and to delete an obsolete system of records. The proposed new system of records is: FHFA–6, Fraud Reporting System. The deleted system of records is: OFHEO–07 Mortgage Fraud System.

This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's system of records. Congress recognized that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Privacy Act as a rule in accordance with the Administrative Procedures Act. The Director of FHFA has determined that records and information in this new system of records is not exempt from requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427, 35), FHFA has submitted a report describing the new system of records covered by this notice, to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

The proposed new system of records described above is set forth in its entirety below.

Dated: August 26, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

FHFA–6

SYSTEM NAME:

Fraud Reporting System.

[1] *See* HERA, Division A, Title I, Section 1101 "Establishment of the Federal Housing Finance Agency" and Title III, Section 1301 "Abolishment of OFHEO."

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Federal Housing Finance Agency, 1700 G Street, NW., Washington, 20552; 1625 Eye Street, NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency or by individuals assisting such employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The "Fraud Reporting System" contains information about individuals that are suspects of a fraud or possible fraud in connection with a loan or financial instrument purchased or sold involving the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Banks (collectively, "regulated entities"). Such records may include information on:

(a) Individuals who are directors, officers, employees, agents, of a regulated entity;

(b) Individuals that are actual or potential victims of fraud or possible fraud;

(c) Individuals who are named as possible witnesses;

(d) Individuals who have or might have information about reported matters;

(e) Individuals named as preparers of any reports; or

(f) Individuals named as persons to be contacted for assistance by FHFA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the "Fraud Reporting System" contain information about the individuals specified in "Categories of Individuals Covered by the System" such as name, address, social security numbers, and financial information. The records may also contain information pertaining to criminal prosecutions, civil actions, enforcement proceedings, and investigations resulting from or relating to the records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C. 4513, 4514, 4526 and 4642 and 12 CFR part 1233.

PURPOSE(S):

The information in this system of records will be analyzed by FHFA staff in carrying out the statutory authorities of the Director to require the regulated entities to report fraud or possible fraud involving a loan or financial instrument purchased or sold by the regulated entity upon discovery consistent with the safety and soundness responsibilities of FHFA under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

It shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. FHFA personnel authorized as having a need to access the records in performance of their official functions.

2. The Financial Crimes Enforcement Network and other law enforcement and government entities, as determined by FHFA to be appropriate.

3. A regulated entity.

4. A consultant, person, or entity that contracts or subcontracts with FHFA, to the extent necessary for the performance of the contract or subcontract and consistent with the purpose of the system, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper and electronic format.

RETRIEVABILITY:

Records may be retrieved by sectionalized data fields or by the use of search and selection criteria, such as an individual's or entity's name.

SAFEGUARDS:

Records are maintained in controlled access areas. Electronic records are protected by restricted access procedures, including user identifications and passwords. Only FHFA staff whose official duties require access are allowed to view, administer, or control these records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration and FHFA retention schedules. Records are disposed of according to accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Division of Enterprise Regulation, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552 and the Division of Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURES:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov.* The regular mail address is: Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The fax number is: 202–408–2580. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet "Privacy Act Request" in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests to access, amend, or correct a record to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is obtained from the regulated entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some information in this system that is investigatory and compiled for law enforcement purposes is exempt under subsection 552a(k)(2) of the Privacy Act.

[FR Doc. 2010–21520 Filed 8–27–10; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Benefit Financial Group, Inc., Fort Smith, Arkansas; to become a bank holding company upon the conversion of its subsidiary bank, Benefit Bank, Fort Smith, Arkansas, from a federally chartered savings institution to a state chartered bank.

Board of Governors of the Federal Reserve System, August 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–21519 Filed 8–27–10; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 11–01, Fiscal Year (FY) 2011 Continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration's (GSA) annual per diem review has resulted in lodging and meal allowance changes for locations within CONUS to provide for the reimbursement of Federal employees' expenses covered by per diem. This Per Diem Bulletin updates the maximum per diem amounts in existing per diem localities and updates the standard CONUS rate. The CONUS per diem rates prescribed in Bulletin 11–01 may be found at *http://www.gsa.gov/perdiem.* GSA bases the lodging per diem rates on the average daily rate that the lodging industry reports to an independent organization. The use of such data in the per diem rate setting process enhances the government's ability to obtain policy-compliant lodging where it is needed. In conjunction with the annual lodging study, GSA identified five new non-standard areas (NSAs): West Des Moines, Iowa (Dallas County); Queen Anne County, Maryland; Moab, Utah (Grand County); Richland, Washington (Benton County); and Berkeley County, West Virginia.

If a per diem rate is insufficient to meet necessary expenses in any given location, Federal executive agencies can request that GSA review that location. Please review numbers five and six of GSA's per diem Frequently Asked Questions at (*http://www.gsa.gov/perdiemfaqs*) for more information on the special review process.

In addition, the Federal Travel Regulation allows for actual expense reimbursement as directed in § 301–11.300 through 301–11.306. GSA may begin asking agencies for data related to their use of actual expense approvals; if so, more information will be forthcoming.

DATES: This notice is effective October 1, 2010, and applies for travel performed on or after October 1, 2010 through September 30, 2011.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill Denning, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management, at (202) 208–7642, or by e-mail at *travelpolicy@gsa.gov.* Please cite Notice of Per Diem Bulletin 11–01.

SUPPLEMENTARY INFORMATION:

A. Background

After analyzing recent lodging data, GSA determined that lodging rates for certain localities do not adequately reflect the current lodging markets. GSA used the same lodging rate setting methodology for establishing the FY 2011 per diem rates as when establishing the FY 2010 rates.

GSA issues and publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem.* This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 23, 2010.

Craig Flynn,

Assistant Deputy Associate Administrator.

[FR Doc. 2010–21489 Filed 8–27–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0162; 60-day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

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 60 days.

Proposed Project: State Medicaid Fraud Control Units' Reports—OMB No. 0990–0162—Extension-Office of the Inspector General (OIG).

Abstract: Office of the Inspector General (OIG) is requesting an extension by Office of Management and Budget for the collection of information to specifically comply with the requirements in Title 19 of the Social Security Act at 1903(q) and 42

CFR1007.15 and 1007.17, in accordance with the Paperwork Reduction Act. The information collected consists of fifty separate annual reports and fifty separate application requests for Federal grant certification/re-certification. The collection is submitted yearly to the Office of the Inspector General (OIG) by the fifty established State Medicaid Fraud Control Units (Units). OIG uses the information received to assess and determine the Units' eligibility for continued participation in the Federal Medicaid fraud control grant program.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State (MFCU) Units	Annual Report	50	1	88	4,400
State (MFCU) Units	Certification/Recertification Application	50	1	5	250
Total					4,650

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–21400 Filed 8–27–10; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0162; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

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.

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State (MFCU) Units	Certification/Recertification Application	50	1	5	250
Total					4,650

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–21433 Filed 8–27–10; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0162; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

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 60 days.

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Abstract: Office of the Inspector General (OIG) is requesting an extension by Office of Management and Budget for the collection of information to specifically comply with the requirements in Title 19 of the Social Security Act at 1903(q) and 42 CFR 1007.15 and 1007.17, in accordance with the Paperwork Reduction Act. The information collected consists of fifty separate annual reports and fifty separate application requests for Federal grant certification/re-certification. The collection is submitted yearly to the Office of the Inspector General (OIG) by the fifty established State Medicaid Fraud Control Units (Units). OIG uses the information received to assess and determine the Units' eligibility for continued participation in the Federal Medicaid fraud control grant program.

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State (MFCU) Units	Certification/Recertification Application	50	1	5	250
Total					4,650

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–21403 Filed 8–27–10; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the twenty-third meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Tuesday, October 5, 2010, and from 8:30 a.m. to approximately 3:45 p.m. on Wednesday, October 6, 2010, at the National Institute of Health, Building 31, Conference Room 6C6, 9000 Rockville Pike, Bethesda, MD 20892. The meeting will be open to the public with attendance limited to space available. The meeting will also be Web cast.

The main agenda item will be a review of the revised draft report on genetics education and training and discussion of the final draft recommendations. The meeting will also include sessions on genomic data sharing and the implications of affordable whole-genome sequencing, an update on the implementation of the Genetic Information Nondiscrimination Act, and a briefing from the Food and Drug Administration on activities related to genetic testing.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Please note that because SACGHS operates under the provisions of the Federal Advisory Committee Act, all public comments will be made available to the public. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://oba.od.nih.gov/SACGHS/sacghs_meetings.html.*

Dated: August 24, 2010.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21533 Filed 8–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the twenty-third meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Tuesday, October 5, 2010, and from 8:30 a.m. to approximately 3:45 p.m. on Wednesday, October 6, 2010, at the National Institute of Health, Building 31, Conference Room 6C6, 9000 Rockville Pike, Bethesda, MD

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Dated: August 24, 2010.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21532 Filed 8–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date: September 15, 2010 9 a.m.–2 p.m.; September 16, 2010 8:30 a.m.–12:30 p.m.

Place: Embassy Suites Crystal City Hotel, 1300 Jefferson Davis Highway, Arlington, VA 22202, (703) 979–9799.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department, the Center for Medicare and Medicaid Services, and the Office of the National Coordinator for Health Information Technology. Draft letters to the HHS Secretary regarding the HIPAA national health plan identifier and operating rules on eligibility and claim status will also be discussed. In the afternoon there will be a discussion about a letter to the HHS Secretary regarding sensitive information in medical records.

On the morning of the second day there will be a review of the final letters regarding the national health plan identifier, operating rules on eligibility and claim status, and sensitive information in medical records. Subcommittees will also present their reports. The afternoon of the second day will conclude with a discussion of the 60th Anniversary Symposium that was held in June 2010.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 24, 2010.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (Science and Data Policy), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–21516 Filed 8–27–10; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public meeting. The meeting is open to the public.

DATES: The NBSB will hold a public meeting on September 22, 2010 from 8 a.m. to 5 p.m. ET. The agenda is subject to change as priorities dictate.

ADDRESSES: Washington, DC Metro Area. The venue details will be posted on the NBSB webpage at *http://www.phe.gov/Preparedness/legal/boards/nbsb/Pages/default.aspx* as they become available.

FOR FURTHER INFORMATION CONTACT: E-mail: *NBSB@HHS.GOV.*

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

Background: A portion of this public meeting will be dedicated to a report and presentation by the Disaster Mental Health Subcommittee to the NBSB on their assessment of the Department of Health and Human Services' progress to better integrate behavioral health into emergency preparedness and response

activities. Subsequent agenda topics will be added as priorities dictate.

Availability of Materials: The meeting agenda and materials will be posted on the NBSB Web site at *http://www.phe.gov/Preparedness/legal/boards/nbsb/Pages/default.aspx* prior to the meeting.

Procedures for Providing Public Input: Any member of the public providing oral comments at the meeting must sign in at the registration desk and provide his/her name, address, and affiliation. All written comments must be received prior to September 21, and should be sent by e-mail to *NBSB@HHS.GOV* with "NBSB Public Comment" as the subject line. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should e-mail *NBSB@HHS.GOV.*

Dated: August 10, 2010.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2010–21504 Filed 8–27–10; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Understanding Patients' Knowledge and Use of Acetaminophen—Phase 2." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by October 29, 2010.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.* Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Understanding Patients' Knowledge and Use of Acetaminophen—Phase 2

AHRQ proposes a cross-sectional prospective survey to identify issues that relate to the misuse and overdosing of over-the-counter (OTC) acetaminophen. The survey was developed based on results from a previous data collection (OMB control number 0935–0154, approved on 10/13/2009). Acetaminophen is the most widely used analgesic and antipyretic drug in the U.S. When appropriately used, it is a very safe agent. However, a single large overdose, or several supratherapeutic dosages in a short period of time, has been associated with acute liver failure, which can occur with dosages over 250 mg/kg over a 24-hour period, or > 12 g in an adult. Toxicity from acetaminophen has been on the rise in the past 3 decades, and is now the most common cause of acute liver failure in the U.S., surpassing viral hepatitis.

This project has the following aims:

(1) To estimate frequency of use, knowledge, and practices regarding use of OTC acetaminophen, and

(2) To evaluate potential determinants of misuse in community-based samples.

This information will be useful for policy makers to consider and to evaluate regulations and legislation with respect to the distribution, dispensing and sales of OTC acetaminophen.

This study is being conducted by AHRQ through its contractor, the University of Texas. This project supports AHRQ's Centers for Education and Research on Therapeutics initiative to promote the safe and effective use of therapeutics. See 42 U.S.C. 299b–1(b). It also supports AHRQ's mandate for the inclusion of priority populations. See 42 U.S.C. 299(c).

Method of Collection

To achieve the projects' aims the following data collections will be implemented:

(1) Surveys with parents of young children (age < 8 years). The purpose of this survey is to learn how parents administer acetaminophen to their children and to identify determinants of misuse of acetaminophen;

(2) Surveys with adolescents (ages 13 to 20). The purpose of this survey is to learn how adolescents use acetaminophen and to identify determinants of misuse of acetaminophen;

(3) Surveys with adults (21 to 65 years of age). The purpose of this survey is to learn how adults use acetaminophen and to identify determinants of misuse of acetaminophen;

(4) Surveys with adults (greater than 65 years of age). The purpose of this survey is to learn how older adults use acetaminophen and to identify determinants of misuse of acetaminophen, particularly in regards to age-related factors.

Data will be collected in person using paper questionnaires administered by the project personnel.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in this project. Each of the four questionnaires used in the planned face-to-face surveys will require approximately 30 minutes to complete. The total annualized burden for all participants is estimated to be 400 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondent's time to participate in the project. The total annualized cost burden is estimated to be $8,361.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection mode	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Surveys with Parents of Children < 8 years of age	300	1	30/60	150
Surveys with Adolescents (13 to 20 years of age)	200	1	30/60	100
Surveys with Adults (20 to 65 years)	150	1	30/60	75
Surveys with Adults (greater than 65 years)	150	1	30/60	75

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Data collection mode	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Total	800	na	na	400

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection mode	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Surveys with Parents of Children < 8 years of age	300	150	$20.90	$3,135
Surveys with Adolescents (13 to 20 years of age)	200	100	20.90	2,090
Surveys with Adults (20 to 65 years)	150	75	20.90	1,568
Surveys with Adults (greater than 65 years)	150	75	20.90	1,568
Total	800	400	na	8,361

*Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States, May 2009, "U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated annualized cost to the Federal government for this six-month project. The total cost is $280,269. This amount includes all direct and indirect costs of the design, data collection, analysis, and reporting phase of the study.

EXHIBIT 3—ESTIMATED ANNUALIZED COST

Cost component	Total cost
Project Development	$33,590
Data Collection Activities	85,760
Data Processing and Analysis	30,800
Publication of Results	750
Project Management	31,093
Overhead	98,276
Total	280,269

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 23, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–21498 Filed 8–27–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09BV]

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

Workload Management Study of Central Cancer Registries—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC currently supports the National Program of Cancer Registries (NPCR), a group of central cancer registries in 45 states, the District of Columbia, and 2 territories. The central cancer registries are data systems that collect, manage, and analyze data about cancer cases and cancer deaths. NPCR-funded central cancer registries submit population-based cancer incidence data to CDC on an annual basis (OMB No. 0920–0469, exp. 11/30/2012).

Central cancer registries report that they are chronically understaffed, and many registries are concerned about the impact of staff shortages on data quality. Staffing patterns are known to vary widely from registry to registry, and registries differ in the volume of cases that they process as well as their use of information technology. Cancer registries have asked for clear staffing guidelines based on registry characteristics such as size, degree of automation, and reporting procedures.

CDC proposes to conduct a one-time Workload and Time Management (WLM) Survey to inform the development of staffing guidelines for central cancer registries. Respondents will be 46 cancer registrars in the NPCR-funded central cancer registries in 45 states and the District of Columbia. Participation will be requested by e-mail. Non-responders will receive follow-up telephone calls to encourage participation.

The WLM survey includes basic questions about registry characteristics such as organizational affiliation and number of staff. The WLM also includes

questions about the caseload for the registry (the number of new cancer cases reported annually), the sources of case information, whether case information is collected utilizing manual or electronic methods, and the type of software employed for electronic collection. Because many tasks can be performed manually or using electronic methods, and because cancer coding systems are frequently revised to reflect changes in cancer diagnosis and care, the WLM survey asks registry managers to identify training needs that would improve registry productivity, and to provide comments about other resource needs and management issues.

The web-based WLM Survey will also collect information about the total amount of time dedicated by registry staff to specific activities such as case finding, records abstraction, follow-up, quality assurance, professional development, travel, and death clearances. In order to complete this section of the WLM survey, detailed information will be collected from registry staff. An average of eight registrars in each registry will be asked to maintain a paper Work Activities Journal for a one-week period. Each registrar will record the number of hours and minutes dedicated to case finding, records abstraction, follow-up, and quality assurance, and where applicable, indicate whether tasks were conducted manually or electronically. In addition, each registrar will estimate the amount of time dedicated to auditing, database management, professional development, travel, and death clearances on a monthly or annual basis. At the end of the one-week data collection period, the registry manager will compile information from all of the Work Activities Journals completed by the registry's staff. The aggregate information will be reported to CDC through the WLM Survey. The individual Work Activities Journals will not be submitted to CDC.

Findings from the WLM survey will enable CDC to assess the workforce necessary for meeting data reporting requirements and to estimate the impact of planned changes to surveillance data reporting. CDC plans to develop guidance so that cancer registry managers can more effectively measure workload, evaluate the need for staff and staff credentials, and advocate for adequate staffing.

OMB approval is requested for one year. Participation in the survey is voluntary. There are no costs to respondents other than their time. The total estimated annualized burden hours are 921.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
NPCR managers	Workload and Time Management Survey	46	1	4
	Telephone Reminder	15	1	3/60
NPCR Staff Registrars	Work Activities Journal	368	1	2

Dated: August 23, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–21496 Filed 8–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–10AK]

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 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Notifiable Condition Messaging Support Strategy—New—Public Health Surveillance Program Office (PHSPO); Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. CDC's *Morbidity and Mortality Weekly Report* publishes incidence tables for nationally notifiable conditions reported through the National Electronic Disease Surveillance System (NEDSS) and other surveillance data sources to the National Notifiable Diseases Surveillance System (NNDSS).

NEDSS (OMB 0920–0728, expiration date: 2/28/2010) is an internet-based infrastructure for public health surveillance data exchange that uses specific Public Health Information Network (PHIN) and NEDSS electronic data and information standards to advance the development of efficient, integrated, and interoperable surveillance systems at federal, state and local levels. CDC's proposed Public Health Surveillance Program Office (PHSPO) is responsible for establishing and managing the national reporting system of epidemiologic data for notifiable conditions (diseases) via NEDSS.

Case notification messaging for most of the nationally notifiable conditions (77 infectious conditions as of August 2009) will eventually be supported by the standard Health Level 7 v2.5 (HL7) message format. The HL7 message format requires a Message Mapping Guide (MMG)—developed by the NEDSS and NNDSS programs, in collaboration with state and federal subject matter experts—to implement case notification to CDC via NEDSS. At present, seven MMGs are available for implementation by jurisdictions, and current NEDSS resources support the development of three new MMGs per year. A jurisdiction's implementation of a MMG requires an average of four months per MMG, and a jurisdiction could potentially implement up to three MMGs a year. In most instances, National Center for Public Health Informatics' (NCPHI) programmatic and technical expertise is required to support this process at the jurisdictional level.

The National Notifiable Condition Messaging Support Strategy

Questionnaire has been developed by the NEDSS program to gather information needed for formulating a technical and project management support strategy for 57 reporting jurisdictions (i.e., 50 states, 5 territories, and 2 cities (New York City, NY and Washington, DC)) as they implement NEDSS messaging using MMGs. A jurisdiction's response to the questionnaire will be used by the NEDSS implementation and management teams to assess the jurisdiction's IT system environment and capacity and help determine the project schedule and level of human and technical support needed to complete the jurisdiction's implementation of a nationally notifiable condition message. NEDSS infrastructure implementation support includes, but is not limited to implementing NEDSS Message Subscription Service (MSS) and NEDSS Messaging Solution (NMS) software in requesting jurisdictions; providing MSS and NMS software training and ongoing technical support; and distributing funding via the CDC Epidemiology and Laboratory Capacity cooperative agreement.

Questionnaires will be distributed to jurisdictions that initiate MMG implementation for a condition; therefore, the maximum annual frequency of responses per jurisdiction is three. The NEDSS team will request the jurisdiction to voluntarily complete the questionnaire, but a response is not a pre-requisite for support.

There is no cost to respondents other than their time to participate in the survey. The total estimated annual burden hours are 114.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State, Territory and Local Public Health Department.	National Notifiable Condition Messaging Support Strategy Questionnaire.	57	3	40/60

Dated: August 23, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–21497 Filed 8–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0258]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; Submission of Information to a Master File in Support of Petitions; Electronic Submission Using Food and Drug Administration Form 3503

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 29, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0016. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; Submission of Information to a Master File in Support of Petitions; Electronic Submission Using FDA Form 3503—21 CFR 70.25, 71.1, 170.35, 171.1, 172, 173, 179, and 180 (OMB Control Number 0910–0016)—Revision

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under section 409 of the FD&C Act that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) of the FD&C Act is effective. Food additive petitions (FAPs) are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 179, and 180 (21 CFR parts 172, 173, 179, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the FD&C Act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the FD&C Act. Color additive petitions (CAPs) are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 of the agency's regulations (21 CFR 71.1) specifies the information that a

petitioner must submit to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

FDA scientific personnel review FAPs to ensure the safety of the intended use of the additive in or on food or that may be present in food as a result of its use in articles that contact food. Likewise, FDA personnel review color additive petitions to ensure the safety of the color additive prior to its use in food, drugs, cosmetics, or medical devices.

Under section 201(s) of the FD&C Act (21 U.S.C. 321(s)), a substance is Generally Recognized as Safe (GRAS) if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The FD&C Act historically has been interpreted to permit food manufacturers to make their own initial determination that use of a substance in food is GRAS and thereafter seek affirmation of GRAS status from FDA. FDA reviews petitions for affirmation of GRAS status that are submitted on a voluntary basis by the food industry and other interested parties under authority of sections 201, 402, 409, and 701 of the FD&C Act (21 U.S.C. 321, 342, 348, and 371). To implement the GRAS provisions of the act, FDA has set forth procedures for the GRAS affirmation petition process in § 170.35(c)(1) of its regulations (21 CFR 170.35(c)(1)). While the GRAS affirmation petition process still exists, FDA has not received a GRAS affirmation petition since the establishment of the voluntary GRAS notification program and is not expecting any during the period covered by this proposed extension of collection of information.

Currently, interested persons may transmit regulatory submissions to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3503 for FAP and Form FDA 3504 for CAP. FDA is revising Form FDA 3503 to better enable its use for electronic submission and to permit its use for multiple types of submissions, which eliminates the need for Form FDA 3504. Because Form FDA 3503 helps the respondent organize their submission to focus on the information needed for FDA's safety review, FDA now recommends that this form be used for FAPs and CAPs, whether submitted in electronic format or paper format. FDA estimates that the amount of time for respondents to complete the revised FDA Form 3503 will continue to be 1 hour. The revised Form FDA 3503 can be used to submit information to FDA in electronic format using the Electronic Submission Gateway portal. The revised Form FDA 3503 can be used to substitute for the "Dear Sir" section of 21 CFR 71.1(c) for a CAP and 21 CFR 171.1(c) for a FAP. The revised Form FDA 3503 provides for submitters to indicate the date of their most recent presubmission consultation activity with FDA. The revised Form FDA 3503 can also be used to organize information within a Master File submitted in support of petitions according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to the Agency, thus minimizing paperwork burden for food and color additive approvals. The revised Form FDA 3503 is formatted to accept submissions for both FAP and CAP, thus making redundant Form FDA 3504 for collecting CAP submissions. Therefore, FDA is eliminating Form FDA 3504.

Description of respondents: Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

In the **Federal Register** of June 14, 2010 (75 FR 33624), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Operating and Maintenance Costs	Total Hours
70.25, 71.1	2	1	2	1,337	$5,600	2,674
GRAS Affirmation Petitions						
170.35	1 or fewer	1	1 or fewer	2,614	0	2,614
FAPs						
171.1	3	1	3	7,093	0	21,279
FDA Form 3503	6	1	6	1	0	6
Total					$5,600	26,573

[1] There are no capital costs associated with this collection of information.

The estimate of burden for food additive, color additive, or GRAS affirmation petitions is based on FDA's experience and the average number of new petitions received in calendar years 2006, 2007, 2008, and 2009, and the total hours expended in preparing the petitions. In compiling these estimates, FDA consulted its records of the number of petitions received in the past 4 years. The figures for "Hours per Response" are based on estimates from experienced persons in the Agency and in industry. Although the estimated hour burden varies with the type of petition submitted, an average petition involves analytical work and appropriate toxicological studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from $1,600 to

$3,000, depending on the intended use of the color and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of one Category A and one Category B color additive petition is expected per year. The maximum color additive petition fee for a Category A petition is $2,600 and the maximum color additive petition fee for a Category B petition is $3,000. Because an average of two color additive petitions are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $5,600 (1 x $2,600 + 1 x $3,000 listing fees = $5,600). There are no capital costs associated with color additive petitions.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the FD&C Act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §§ 70.25 and 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 179, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: August 19, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–21388 Filed 8–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Funding Opportunity

Purpose of Notice: Availability of funding opportunity announcement.

Funding Opportunity Title/Program Name: Older Americans Act (OAA), Title VI, Part A: Grants for Native Americans; Part B: Grants for Native Hawaiian Programs; and Part C: Grants for the Native American Caregiver Support Program.

Announcement Type: This is the initial announcement for this funding opportunity.

Funding Opportunity Number: Program Announcement No. is HHS–2011–AoA–TitleVI–1101.

Statutory Authority: The Older Americans Act, Public Law 109–365.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.047, Title VI Parts A and B and 93.054, Title VI Part C.

Dates: The deadline date for the submission of applications is November 30, 2010.

I. Funding Opportunity Description

This announcement seeks proposals for grants to provide nutritional and supportive services to Indian elders and Alaskan Natives under Part A; Native Hawaiian elders under Part B; and Family Caregiver support services under Part C of the OAA. The goal of these programs is to increase home and community-based services to older Indians, Alaskan Natives and Native Hawaiians, that respond to local needs and are consistent with evidence-based practices. A detailed description of the funding opportunity may be found at *http://www.grants.gov, http://www.aoa.gov* under Grant Opportunities →Funding Opportunities, or *http://www.olderindians.org.*

II. Award Information

1. Funding Instrument Type

Grant.

2. Anticipated Total Priority Area Funding per Budget Period

The Administration on Aging (AoA) will accept applications for funding for a three-year project period, April 1, 2011 to March 31, 2014, in FY 2011 under the OAA, Title VI, Part A: Grants for Native Americans; Part B: Grants for Native Hawaiian Programs; and Part C: Grants for the Native American Caregiver Support Program. Current annual funding levels for Title VI, Part A and Part B range from $76,160 to $186,000. Current annual funding levels for Title VI, Part C range from $14,410 to $57,680. Distribution of funds among tribal organizations and Native Hawaiian organizations is subject to the availability of appropriations to carry out Title VI. Funding is based on the number of eligible elders age 60 and older in your proposed service area. Successful applications from current grantees will receive priority consideration. Successful applications from new applicants will be funded pending the availability of funds or at the discretion of the Assistant Secretary for Aging. For those applying for Title VI, Parts A or B funding you have the option to also apply for Part C. However, to apply for Part C, you must apply for both Part A and Part C or Part B and Part C.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Eligibility for grant awards is limited to all current Title VI, Part A and Part B grantees; current grantees who wish to leave a consortium; and eligible federally recognized Indian tribal organizations that are not now participating in Title VI and would like to apply as a new grantee. Those tribes who were a part of a consortium receiving a Title VI grant in 1991 and applying individually will be considered a "current grantee." Proof of being a part of a consortium that was funded in FY 1991 must be submitted as part of the application. A tribal organization or Indian tribe must meet the application requirements contained in sections 612(a), 612(b), and 612(c) of the OAA and 45 CFR 1326.19. A public or nonprofit private organization serving Native Hawaiians must meet the application requirements contained in sections 622(1), 622(2), and 625 of the OAA and 45 CFR 1328.19. Under the Native American Caregiver Support Program, a tribal or Native Hawaiian organization must meet the requirements as contained in section 631 of the OAA. These sections are described in the application kit.

2. Cost Sharing or Matching

Cost Sharing or matching does not apply to these grants.

3. D–U–N–S Number

All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/* or by calling their live help line at 1–888–814–1435. Applicants are also encouraged to check their Web site for other pertinent information regarding this process.

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal

Programs, is not applicable to these grant applications.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Washington, DC 20001; by calling Cecelia Aldridge, telephone: (202) 357–3422; or online at *http://www.grants.gov, http://www.aoa.gov* under Grant Opportunities →Funding Opportunities, or *http://www.olderindians.org.*

2. Application Submission Requirements

An original and complete application must include all attachments and be signed by the principal official of the tribe.

Applicants are encouraged to submit applications electronically via e-mail to *Grants.Office@aoa.hhs.gov* with the following in the subject line of the e-mail: "FY2011–2014 Title VI Application: (insert your tribal organization name)."

If sending via overnight delivery service, applications must be submitted to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Ave., NW., Room 4714, Washington, DC 20001, attn: Yi-Hsin Yan.

Faxed applications will not be accepted.

3. Submission Dates and Times

To receive consideration, applications must be received electronically by 11:59 p.m. EST on November 30, 2010, or postmarked by the overnight delivery service no later than November 30, 2010. If AoA's *Grants.Office@AoA.HHS.gov* e-mail site cannot reasonably be used, a hard copy application and all attachments must be provided to an overnight delivery service and documented with a receipt by November 30, 2010.

V. Screening Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time. In addition, applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only completed and signed applications that meet these requirements will be considered for funding.

VI. Application Review Information

Not Applicable

VII. Agency Contacts

For further information/questions regarding your application, contact M. Yvonne Jackson, Ph.D., U.S. Department of Health and Human Services, Administration on Aging, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, One Massachusetts Avenue, NW., Room 5013, Washington, DC 20001; telephone (202) 357–3501; fax (202) 357–3560; e-mail *Yvonne.Jackson@aoa.hhs.gov.*

Dated: August 24, 2010.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2010–21565 Filed 8–27–10; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Resource for Biopreservation.

Date: September 14, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonw@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiovascular Computational Model.

Date: September 17, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 24, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21526 Filed 8–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0445]

Supplemental Funding Under the Food and Drug Administration's Food Emergency Response Laboratory Network Microbiological Cooperative Agreement Program (U18) PAR–09–215; Request for Supplemental Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent to provide supplemental funding to the existing cooperative agreement (U18), PAR–09–215, with the Food and Drug Administration and a request for supplemental applications.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of supplemental grant funds for the support of Food Emergency Response Laboratory Network (FERN) Microbiological Laboratories. The goal of these FERN Microbiological Laboratories supplements is a minor program expansion to enhance the lab capabilities to handle human pathogenic bacteria in animal feed.

DATES: Important dates are as follows:

1. The supplemental application due date is August 30, 2010.

2. The anticipated start date is September 2010.

3. The opening date is August 30, 2010.

4. The expiration date is September 6, 2010.

FOR FURTHER INFORMATION CONTACT: Tim McGrath, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, rm. 12–41, Rockville, MD 20857, 301–827–1028, email: *timothy.mcgrath@fda.hhs.gov*; or Camille R. Peake, Food and Drug Administration, 5630 Fishers Lane, rm. 2105, Rockville, MD 20857, 301–827–7168, FAX: 301–827–7101, email: *Camille.Peake@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

For more information on the original funding opportunity announcement (FOA) for the FERN Microbiological Laboratories, please refer to the full FOA located at *http://grants.nih.gov/grants/guide/pa-files/PAR–09–215.html*. The program is further described in the Catalog of Federal Domestic Assistance under 93.103.

A. Background

This **Federal Register** announcement issued by FDA under the FERN Microbiological Cooperative Agreement Program Grant mechanism (U18) is to solicit applications from existing FERN Microbiology Laboratories to enhance current Cooperative Agreement Program (CAP) capabilities. The FERN cooperative agreements are to enable the analyses of foods and food products in the event that laboratory surge capacity is needed by FERN and FDA for analyses related to microbiological contamination, either through intentional or unintentional means. The supplemental grant funds will enable analyses of human pathogenic bacteria found in animal feed, for samples collected by Federal, State, or local agencies. Numbers of samples and scheduling of samples will be done by the FERN National Program Office (NPO) in coordination with State/local lab authorities.

These supplemental grant funds will also be utilized to enhance animal feed analysis results through the usage of standardized methods, equipment platforms (provided by the grant), analytical worksheets, and electronic reporting. The supplemental funds will also provide training and proficiency testing for each method/platform. Minimal quality management systems will be initiated for each lab, based on existing systems in place in each lab and consultations between the FERN NPO and each lab management group.

Each laboratory shall develop its own consensus decisionmaking, size, and format. Federal agency representatives may be invited to be nonmember liaisons or advisors to the laboratory and its meetings. Supplemental funds may not be used for Federal employees to travel to or participate in these meetings.

B. Research Objectives

Selected FDA FERN Microbiological Cooperative Agreement Laboratories (CAP labs) will participate in a special Cooperative Agreement program to enhance their ability to handle human pathogenic bacteria in animal feed. This additional program will be compatible with other FERN Cooperative Agreement work that the selected laboratories will be performing. This special program will involve screening and detection studies for selected pathogens (*Listeria, Salmonella, Escherichia coli* O157:H7 and generic *E. coli*). The isolates will be tested using methods agreed upon in consultation with the Center for Veterinary Medicine's (CVM) Office of Research, most of which are already being used to isolate these organisms from human foods. The selected labs will participate in FERN food defense/food safety assignments. The participation in this cooperative agreement will expand the ability of FERN to screen for potential foodborne pathogens in these feed matrices. In addition, this project will provide CVM with information needed to assess future testing needs.

C. Eligibility Information

These supplemental grant funds are only available to existing grant recipients from State, local, and tribal government FERN laboratories and are authorized by section 312 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) (42 U.S.C. 247b-20). This program is described in the Catalog of Federal Assistance under number 93.448. All projects developed with these funds at State, local, and tribal levels must have national implication or application that can enhance Federal food and feed safety and security programs.

D. Requirements

Laboratories will be selected based on the following criteria:

- If it's an existing FDA FERN Microbiological Cooperative Agreement Laboratory;
- If it has routine microbiological capabilities as demonstrated through established, ongoing State testing programs, preferably those involving animal feed testing;
- If it participates in FERN Food Safety/Food Defense surveillance assignments;
- If it participates in FERN proficiency testing; and
- If it has a geographically balanced distribution of the selected laboratories.

II. Award Information/Funds Available

A. Award Amount

FDA anticipates providing approximately $50,000 total costs (direct costs only) in support of this supplemental program in fiscal year 2010. It is estimated that up to six microbiological laboratories will be supplemented at the level requested, but not exceeding $50,000 total costs (direct costs only) for a 1-year minor program expansion.

B. Length of Support

The initial award will be for a 1-year performance period and any additional funding related to this supplement will be dependant on successful performance and fiscal appropriations.

III. Paper Application and Submission Information

To submit an application in response to this supplemental notice, applicants should download the PHS–398 form at *http://grants.nih.gov/grants/funding/phs398/phs398.html*.

Submit the paper application to:

Camille R. Peake, Food and Drug Administration, 5630 Fishers Lane, rm. 2105, Rockville, MD 20857, 301–827–7168; and

Jenny Gabb, Office of Regulatory Affairs (HFC–150), Food and Drug Administration, 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–8299.

Dated: August 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–21480 Filed 8–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force (USPSTF)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicits nominations for new members of USPSTF.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

The USPSTF, a standing, independent panel of non-Federal experts that makes evidence-based recommendations to the health care community and the public regarding the provision of clinical preventive services, see 42 U.S.C. 299b–4(a), is composed of members appointed to serve for four-year terms with an option for reappointment. New members are selected each year to replace approximately one fourth of the USPSTF members, *i.e.,* those who are completing their appointments. Individuals nominated but not appointed in previous years, as well as those newly nominated, are considered in the annual selection process.

USPSTF members meet three times a year for two days in the Washington, DC area. Between meetings, member duties include reviewing and preparing comments (off site) on systematic evidence reviews prior to discussing and making recommendations on preventive services, drafting final recommendation documents, and participating in workgroups on specific topics or methods.

A diversity of perspectives is valuable to the work of the USPSTF. To help obtain a diversity of perspectives among nominees, AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals can self nominate. Organizations and individuals may nominate one or more persons qualified for membership on the USPSTF.

Qualification Requirements: The mission of the USPSTF is to review the scientific evidence related to the effectiveness and appropriateness of clinical preventive services for the purpose of developing recommendations for the health care community. Therefore, in order to qualify for the USPSTF, an applicant or nominee MUST demonstrate the following:

1. Knowledge and experience in the critical evaluation of research published in peer reviewed literature and in the methods of evidence review;

2. Understanding and experience in the application of synthesized evidence to clinical decisionmaking and/or policy;

3. Expertise in disease prevention and health promotion;

4. Ability to work collaboratively with peers; and

5. Clinical expertise in the primary health care of children and/or adults, and/or expertise in counseling and behavioral interventions for primary care patients.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as medical decisionmaking, clinical epidemiology, behavioral medicine, health equity, and health economics. For individuals with clinical expertise in primary health care, additional qualifications in one or more of these areas would enhance their candidacy.

Consideration will be given to individuals who are recognized nationally for scientific leadership within their field of expertise. Applicants must have no substantial conflicts of interest, whether financial, professional, or other conflicts, that would impair the scientific integrity of the work of the USPSTF.

DATES: All nominations submitted in writing or electronically, and received by Friday, October 1, 2010, will be considered for appointment to the USPSTF.

Nominated individuals will be selected for the USPSTF on the basis of their qualifications (in particular, those that address the required qualifications, outlined above) and the current expertise needs of the USPSTF. It is anticipated that two or three individuals will be invited to serve on the USPSTF beginning in January, 2011. All individuals will be considered; however, strongest consideration will be given to individuals with demonstrated training and expertise in a specific area such as family medicine, internal medicine, obstetrics/gynecology, pediatrics, nursing, behavioral medicine, health equity or methodology. AHRQ will retain and consider for future vacancies the nominations of those not selected during this cycle.

ADDRESSES: Submit your responses either in writing or electronically to: Gloria Washington, ATTN: USPSTF Nominations, Center for Primary Care, Prevention, and Clinical Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, *uspstfnominations@AHRQ.hhs.gov.*

Nomination Submissions

Nominations may be submitted in writing or electronically, but must include:

(1) The applicant's current curriculum vitae and contact information, including mailing address, e-mail address, and telephone number and

(2) A letter explaining how this individual meets the qualification requirements and how he/she would contribute to the USPSTF. The letter should also attest to the nominee's willingness to serve as a member of the USPSTF.

AHRQ will later ask persons under serious consideration for membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, and research grants or contracts.

Nominee Selection

Appointments to the USPSTF will be made on the basis of qualifications as outlined above (see Qualification Requirements) and the current expertise needs of the USPSTF.

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Primary Care, Prevention, and Clinical Partnerships, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations, but considers all nominations in selecting members. Information regarded as private and personal, such as a nominee's social security number, home and e-mail addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public. This is in accord with AHRQ confidentiality policies and Department of Health and Human Services regulations (45 CFR 5.67).

FOR FURTHER INFORMATION CONTACT: Gloria Washington at *uspstfnominations@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions, and improvements in the organization, financing, and delivery of health care services. See 42 U.S.C. 299(b).

The USPSTF is a panel of non-Federal experts that makes independent evidence-based recommendations regarding the provision of clinical preventive services. See 42 U.S.C. 299b–4(a). The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. Currently, the USPSTF is convened by the Director of AHRQ, and AHRQ provides ongoing administrative, research and technical support for the USPSTF's operation. The USPSTF is charged with rigorously evaluating the effectiveness and

appropriateness of clinical preventive services and formulating or updating recommendations for primary care clinicians regarding the appropriate provision of preventive services. See 42 U.S.C. 299b–4(a)(1). AHRQ is charged with the dissemination of recommendations. In addition to hard copy materials (that may be obtained from the Publications Clearing house), current USPSTF recommendations and associated evidence reviews are available on the Internet (*http://www.preventiveservices@AHRQ.gov*).

Dated: August 18, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–21500 Filed 8–27–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5051–N]

Medicare Program; Rural Community Hospital Demonstration Program: Solicitation of Additional Participants

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

ACTION: Notice.

SUMMARY: This notice announces a solicitation for up to 20 additional eligible hospitals to participate in the Rural Community Hospital Demonstration program for a 5-year period.

DATES: *Application Submission Deadline:* Applications must be received by 5 p.m. on or before October 14, 2010. Only applications that are considered "timely" will be reviewed and considered by the technical panel.

ADDRESSES: The applications should be mailed or sent by an overnight delivery service to the following address: Centers for Medicare & Medicaid Services, ATTN: Sid Mazumdar, Rural Community Hospital Demonstration, Medicare Demonstrations Program Group, Mail Stop C4–17–27, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed information to be received in a timely manner in the event of delivery delays. Because of staffing and resource limitations, and because we require an application containing an original signature, we cannot accept applications by facsimile (Fax) transmission.

FOR FURTHER INFORMATION CONTACT: Sid Mazumdar at (410) 786–6673 or by e-mail at *Siddhartha.mazumdar@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 410A(a) of Public Law 108–173 required the Secretary to establish a demonstration program to test the feasibility and advisability of establishing cost-based reimbursement for "rural community hospitals" to furnish covered inpatient hospital services to Medicare beneficiaries. The demonstration pays rural community hospitals for such services under a cost-based methodology for Medicare payment purposes for covered inpatient hospital services furnished to Medicare beneficiaries. A rural community hospital, as defined in section 410A(f)(1) of Public Law 108–173, is a hospital that—

- Has fewer than 51 acute care inpatient beds (excluding beds in a distinct psychiatric or rehabilitation unit of the hospital) as reported in its most recent cost report;
- Provides 24-hour emergency care services; and
- Is not designated or eligible for designation as a critical access hospital under section 1820 of the Social Security Act (the Act).

Section 410A(a)(4) of Public Law 108–173 specified that the Secretary was to select for participation from among the applicants no more than 15 rural community hospitals in rural areas of States that the Secretary identified as having low population densities. Using 2002 data from the U.S. Census Bureau, we identified the 10 States with the lowest population density in which rural community hospitals were to be located in order to participate in the demonstration: Alaska, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. (Source: U.S. Census Bureau, Statistical Abstract of the United States: 2003). We solicited eligible hospitals among these States in 2004 and again in 2008. There are currently 10 hospitals participating in the demonstration.

The demonstration is designed to test the feasibility and advisability of reasonable cost reimbursement for inpatient services to small rural hospitals. The demonstration is aimed at increasing the capability of the selected rural hospitals to meet the needs of their service areas.

Section 410A(a)(5) of Public Law 108–173 required a 5-year demonstration period of participation. The 5-year periods of performance for the hospitals originally selected will end by June 30, 2010. For the hospitals selected in 2008, the initial period of performance is scheduled to end on September 30, 2010. Section 10313 of the Patient Protection and Affordable Care Act (ACA), (Pub. L. 111–148) mandates an extension and expansion of the Rural Community Hospital demonstration for 5 years. In order for other hospitals to begin participation in this new demonstration for the 5-year extension period, rural community hospitals must be located among the 20 States with the lowest population density—according to the same criteria and data as the original demonstration. These States are: Alaska, Arizona, Arkansas, Colorado, Idaho, Iowa, Kansas, Maine, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, and Wyoming. (Source: U.S. Census Bureau, Statistical Abstract of the United States: 2003). The statute States that no more than 30 rural community hospitals can participate, and that those hospitals participating in the demonstration program as of the date of the last day of the initial 5-year period will be allowed to continue in the program. Up to 20 additional hospitals will be able to begin participation in the demonstration.

II. Provisions of the Notice

This notice announces the solicitation for up to 20 additional hospitals to participate in the Rural Community Hospital Demonstration Program. Hospitals that enter the demonstration under this solicitation will be able to participate for 5 years.

A. Demonstration Payment Methodology

Hospitals selected for the demonstration will be paid the reasonable costs of providing covered inpatient hospital services, with the exclusion of services furnished in a psychiatric or rehabilitation unit that is a distinct part of the hospital, using the following rules. For discharges occurring—

- In the first cost report period upon the hospital's participation in the demonstration, reasonable costs for covered inpatient services; or
- During the second or subsequent cost reporting period, the lesser of their reasonable costs or a target amount. The target amount in the second cost reporting period is defined as the reasonable costs of providing covered inpatient hospital services in the first cost reporting period, increased by the inpatient prospective payment system update factor (as defined in section 1886(b)(3)(B) of the Act) for that particular cost reporting period. The target amount in subsequent cost

reporting periods is defined as the preceding cost reporting period's target amount increased by the hospital inpatient prospective payment system (IPPS) update factor for that particular cost reporting period.

Covered inpatient hospital services means inpatient hospital services (defined in section 1861(b) of the Act) and includes extended care services furnished under an agreement under section 1883 of the Act.

Section 410A of Public Law 108–173 requires that, "in conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented." In order to achieve budget neutrality for this demonstration program in fiscal years (FYs) 2005, 2006, 2007, 2008, 2009, and 2010, we adjusted the national IPPS rates by an amount sufficient to offset the added costs of this demonstration program. We presented an estimate of the amount to offset additional costs due to the demonstration program in FY 2011, including the costs of additional rural community hospitals, in the FY 2011 inpatient prospective payment system/long-term care hospital prospective payment system (IPPS/LTCH PPS) supplemental proposed rule (*see* the June 2, 2010 **Federal Register** (75 FR 30918)).

B. Participation in the Demonstration

To participate in the demonstration, a hospital must be located in one of the identified States with low-population density and meet the criteria for a rural community hospital. Eligible hospitals that desire to participate in the demonstration must properly submit a timely application. Information about the demonstration and details on how to apply can be found on the CMS Web site: *http://www.cms.gov/DemoProjectsEvalRpts/downloads/2004_Rural_Community_Hospital_Demonstration_Program.pdf.*

III. Collection of Information Requirements

The information collection requirements contained in this notice are subject to the Paperwork Reduction Act of 1995. As discussed in section II.B. of this notice, a hospital must submit the required information on the cover sheet of the CMS Medicare Waiver Demonstration Application to receive consideration by the technical review panel. The burden associated is the time and effort necessary to complete the Medicare Waiver Application and submit the information to CMS. The burden associated with this requirement is currently approved under the Office of Management and Budget control number 0938–0880 with an expiration date of November 20, 2010.

Authority: Section 10313 of the Patient Protection and Affordable Care Act (Pub. L. 111–148)

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: June 22, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–21512 Filed 8–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2003–14610]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License

AGENCY: Transportation Security Administration, DHS.

ACTION: 60 day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0027, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves applicant submission of biometric and biographic information for TSA's security threat assessment in order to obtain the hazardous materials endorsement (HME) on a commercial drivers license (CDL) issued by the U.S. States and the District of Columbia.

DATES: Send your comments by October 29, 2010.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is inviting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0027; Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License, 49 CFR part 1572. TSA is requesting renewal of the currently approved ICR with minor changes. This collection supports the implementation of section 1012 of the USA PATRIOT Act (Pub. L. 107–56, 115 Stat. 272, 396, Oct. 26, 2001), which mandates that no State or the District of Columbia may issue a hazardous materials endorsement (HME) on a commercial driver's license (CDL) unless TSA has first determined the driver is not a threat to transportation security. On November 24, 2004, TSA published the final rule in the **Federal Register** (69 FR 68720), codified at 49 CFR part 1572, that describes the procedures, standards, and eligibility criteria for security threat assessments on individuals seeking to obtain, renew, or transfer a HME on a CDL. TSA subsequently amended the rule on January 25, 2007 (72 FR 3492). In order to conduct the security threat assessment, States (or TSA's agent in

States that elect to have TSA perform the collection of information) must collect information in addition to that already collected for the purpose of HME applications, which will occur once approximately every five years. The driver is required to submit an application that includes personal biographic information (for instance, height, weight, eye and hair color, date of birth); information concerning legal status, mental health defects history, and criminal history; as well as fingerprints. TSA is amending the application to collect optional minor additional information, such as U.S. Department of State forms showing birth abroad to U.S. citizens and U.S. passport number. This information helps the applicant prove U.S. citizenship even though the applicant was born abroad. Also, the application will ask the applicant to state whether he is a new applicant, or is applying to renew or transfer the HME. This will enable the program to better understand and forecast driver retention, transfer rate, and drop-rate to help improve customer service, reduce program costs, and provide comparability with other Federal background checks, including the Transportation Workers Identification Credential (TWIC). TSA is removing items concerning military service. In addition, the rule (49 CFR part 1572) requires States to maintain a copy of the driver application for a period of one year.

These changes should reduce the burden on applicants, States, and TSA. By receiving this information during the application process, requests for additional information or documentation will be reduced during the post-adjudication process.

From 2011 through 2013, TSA estimates respondent drivers will spend approximately 2.9 million hours on the application and background check process. TSA estimates an annualized 300,000 respondents will apply for an HME, and that the application and background check process will involve 975,000 annualized hours. TSA estimates the total costs to respondent drivers will be $80.3 million over the three-year period ($27 million annualized).

Issued in Arlington, Virginia, on August 19, 2010.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–21316 Filed 8–27–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3313–EM; Docket ID FEMA–2010–0002]

Texas; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Texas (FEMA–3313–EM), dated June 29, 2010, and related determinations.

DATES: *Effective Date:* August 14, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 14, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–21601 Filed 8–27–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

DATES: *Effective Date:* August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2010.

Calhoun, Clarke, Dallas, Keokuk, and Washington Counties for Public Assistance.

Hamilton and Ida Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–21603 Filed 8–27–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1931–DR; Docket ID FEMA–2010–0002]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1931–DR), dated

August 3, 2010, and related determinations.

DATES: *Effective Date:* August 14, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 14, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–21599 Filed 8–27–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1931–DR; Docket ID FEMA–2010–0002]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1931–DR), dated August 3, 2010, and related determinations.

DATES: *Effective Date:* August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 3, 2010.

Dawson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–21598 Filed 8–27–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1935–DR; Docket ID FEMA–2010–0002]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1935–DR), dated August 19, 2010, and related determinations.

DATES: Effective Date: August 19, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 19, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms and flooding during the period of July 22 to August 7, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

Carroll, Cook, DuPage, Jo Daviess, Ogle, Stephenson, and Winnebago Counties for Individual Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–21605 Filed 8–27–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1934–DR; Docket ID FEMA–2010–0002]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1934–DR), dated August 17, 2010, and related determinations.

DATES: *Effective Date:* August 17, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 17, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms, flooding, and tornadoes during the period of June 12 to July 31, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jose M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

Adair, Andrew, Atchison, Buchanan, Caldwell, Carroll, Cass, Chariton, Clark, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Howard, Jackson, Lafayette, Lewis, Livingston, Mercer, Nodaway, Putnam, Ray, Schuyler, Scotland, Sullivan, and Worth Counties for Public Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–21604 Filed 8–27–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Revision of Information Collection; Non-Use Valuation Survey, Klamath Basin

AGENCY: U.S. Department of the Interior.

ACTION: Notice; request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary of the Department of the Interior announces the proposed revision of an information collection "Klamath Non-use Valuation Survey," Office of Management and Budget (OMB) Control No. 1090–0010, and that it is seeking comments on its provisions. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this information collection.

ADDRESSES: You may submit your comments directly to the Desk Officer for the Department of the Interior (OMB 1090–0010), Office of Information and Regulatory Affairs, OMB, by electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax at 202–395–5806. Please also send a copy of your comments to the Department of the Interior; Office of Policy Analysis, Attention: Don Bieniewicz, Mail Stop 3530; 1849 C Street, NW., Washington, DC 20240. If you wish to e-mail comments, the e-mail address is *Donald_Bieniewicz@ios.doi.gov.* Reference "Klamath Non-use valuation survey" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

DATES: OMB has 60 days to review this request but may act after 30 days, therefore you should submit your comments on or before September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Simon, Economics Staff Director, Office of Policy Analysis, U.S. Department of the Interior telephone at 202–208–5978 or by e-mail at *Benjamin_Simon@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that the Office of the Secretary will submit to OMB for revision.

The Klamath River provides habitat for fall and spring run Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (Oncorhynchus kisutch), steelhead trout (*Oncorhynchus mykiss*), green sturgeon (*Acipenser medirostris*), Pacific lamprey (*Lampetra tridentate*), and Pacific eulachon (*Thaleichthys pacificus*). Some of these species are important components of non-tribal harvest (*e.g.,* fall Chinook, steelhead), some have important subsistence and cultural value to Klamath Basin tribes (*e.g.,* salmon, sturgeon, lamprey, eulachon), and some are at low levels of abundance or Endangered Species Act-listed (*e.g.,* spring Chinook, lamprey, coho, eulachon). In addition to its importance as fish habitat, the Klamath River also provides water to agriculture through the Bureau of Reclamation's Klamath Irrigation Project. Oversubscription of Klamath water has thwarted recovery of depressed fish stocks and led to economic hardship for farming and fishing communities—

prompting Federal disaster relief for farmers in 2001 and for fishermen in 2006.

In November 2008 the U.S. Government, the States of Oregon and California, and the utility company PacifiCorp signed an agreement in principle (AIP) to remove four hydroelectric dams on the Klamath River by 2020. Dam removal is being considered a viable alternative to volitional fish passage (ladders and screens), which was being considered by the Federal Energy Regulatory Commission (FERC) as a condition for relicensing of PacifiCorp's hydroelectric project. Parties to the AIP are working with stakeholders (including tribes, fishers, farmers, conservation groups, and local governments) to reach a final agreement that would result in the largest dam removal project in U.S. history. If achieved, this agreement will be part of a comprehensive solution to species recovery, water allocation, and water quality problems in the Klamath Basin.

In October 2011 the Secretary of the Interior is expected to make a final determination regarding dam removal, contingent on results of an economic analysis that will address benefits, costs, and distributional effects of dam removal relative to volitional fish passage. Dam removal is expected to have positive long-term effects on the viability of fish populations and other aspects of the Klamath Basin ecosystem. Benefits of these environmental improvements include "non-use values," which accrue to members of the public who value such improvements regardless of whether they ever consume Klamath fish or visit the Klamath Basin. An information collection is planned in order to implement a state-of-the-art non-use valuation survey of the U.S. public that addresses the incremental environmental improvements of dam removal relative to volitional fish passage. This data collection is intended to address one component of an economic analysis that will include all costs and benefits of dam removal relative to volitional fish passage.

II. Data

Title: Klamath Non-Use Valuation Survey.

OMB Control Number: 1090–0010.

Type of Review: Revision of an approved collection.

Affected Entities: Households.

Respondent's Obligation: Voluntary.

Frequency of Response: One time.

Estimated Annual Number of Respondents: 10,885 households who will receive the survey (3,389 respondents and 7,496 non-respondents).

Estimated Total Annual Responses: 3,389.

Estimated Time per Response: The base for this survey is 10,885 households. The households will be divided into two mailing groups, at a 10/90 split. The first wave of mailings will be to 10% of the households. 17% of households are estimated to respond, which will take 30 minutes. Non-respondents will take 3 minutes. The second mailing will be sent to the remaining 83% of non-respondent households. 10% of the households are estimated to respond to the second mailing, taking 30 minutes. The second group of non-respondents are estimated to spend 3 minutes. The Department will then conduct preliminary analysis.

The second wave of mailings will be to the remaining 90% of the households. 17% of households are estimated to respond, which will take 30 minutes. Non-respondents will take 3 minutes. The second phase will be sent to the remaining 83% of non-respondent households. 10% of the households are estimated to respond to the second mailing, taking 30 minutes. The second group of non-respondents are estimated to spend 3 minutes.

The remaining non-respondents from the second mailings will be split into two groups in a 80/20 split. It is assumed that 65% of the non-respondent households will have a phone number. Both groups will be sent another copy of the survey. For the households with a phone number, a non response bias call will be made, taking an estimated 2 to 5 minutes.

Estimated Total Annual Burden Hours: 3,205 hours.

III. Request for Comments

On June 9, 2009, we published in the **Federal Register** (74 FR 27340) a request for public comments on this proposed survey. No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity. The Department of the Interior invites comments on:

(1) Whether or not 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) The accuracy of the agency's estimate of the burden of the collection and 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 through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or prove information to or for a Federal agency.

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 Office of Management and Budget control number.

Dated: August 25, 2010.

Benjamin M. Simon,

Economics Staff Director, Office of Policy Analysis.

[FR Doc. 2010–21521 Filed 8–27–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N180; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before September 29, 2010.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 6034, Albuquerque, NM. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–13850A

Applicant: Jarrod Edens, Fort Worth, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Oklahoma, Arkansas, and Texas.

Permit TE–037155

Applicant: Bio-West, Inc., Round Rock, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for Rio Grande silvery minnow (*Hybognathus amarus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) along the Rio Grande.

Permit TE–17497A

Applicant: Christa Weise, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for lesser long-nosed bat (*Leptonycteris yerbabuenae)* within Arizona and New Mexico and Mexican long-nosed bat (*Leptonycteris nivalis*) within New Mexico and Texas.

Permit TE–17509A

Applicant: University of Rhode Island, Kingston, Rhode Island.

Applicant requests a new permit for research and recovery purposes to obtain seeds of Welsh's milkweed (*Asclepias welshii*) from the Arboretum at Flagstaff (Permit TE–226653) at the University's greenhouse where biological control agent testing will be conducted inside their quarantine facility.

Permit TE–236730

Applicant: Timothy Bonner, San Marcos, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for fountain darter (*Etheostoma fonticola*), San Marcos gambusia (*Gambusia georgei*), Comal Springs riffle beetle (*Heterelmis comalensis*), Texas wild-rice (*Zizania texana*), and Texas blind salamander (*Eurycea rathbuni*) within Texas.

Permit TE–20166A

Applicant: Trinity Bey, Boerne, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 18, 2010.

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 2010–21502 Filed 8–27–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 048880, LLCAD06000, L51010000.FX0000, LVRWB09B2520]

Notice of Availability of the Final Environmental Impact Statement for the Genesis Solar, LLC Genesis Solar Energy Project and Proposed California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Proposed California Desert Conservation Act Plan Amendment/Final Environmental Impact Statement (EIS) for Genesis Solar LLC's Genesis Solar Energy Project (GSEP) and by this notice is announcing its availability.

DATES: The publication of the Environmental Protection Agency's (EPA) Notice of Availability (NOA) of this Final EIS in the **Federal Register** initiates a 30-day public comment period. In addition, the BLM's planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed CDCA Plan Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that EPA publishes its NOA in the **Federal Register**.

ADDRESSES: Copies of the Proposed Plan Amendment/Final EIS for the GSEP have been sent to affected Federal, state, and local government agencies and to other stakeholders. Copies of the Proposed Plan Amendment/Final EIS are available for public inspection at the Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262. Interested persons may also review the document at the following Web site: *http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Genesis_Ford_Dry_Lake.html.* Submit comments on the Final EIS to the Palm Springs South Coast Field Office at the address above or e-mail them to *CAPSSolarNextEraFPL@blm.gov.*

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Allison Shaffer, BLM Project Manager, telephone (760) 833–7100; address (*see* **ADDRESSES,** above); or e-mail *CAPSSolarNextEraFPL@blm.gov.*

SUPPLEMENTARY INFORMATION: Genesis Solar, LLC has submitted an application to the BLM for development of the proposed GSEP, which would consist of two independent solar electric generating facilities with a nominal net electrical output of 125 megawatts (MW) each, resulting in a total net electrical output of 250 MW. The Proposed Action would be designed to utilize solar parabolic trough technology to generate electricity.

Genesis Solar, LLC is seeking a right-of-way (ROW) grant for approximately 4,640 acres of land. Construction and operation of the Proposed Action would disturb a total of about 1,800 acres within the site boundaries, and approximately 90 acres for linear facilities and drainage features outside the site boundaries.

The proposed GSEP would be approximately 27 miles east of the unincorporated community of Desert Center and 25 miles west of the Arizona-California border city of Blythe in Riverside County, California.

The Applicant proposes to construct the GSEP in two phases, which would

be designed to generate a combined total of approximately 250 MW of electricity. Phase 1 would consist of the Unit 1 (western) power block, access road, natural gas pipeline, and electric transmission line. Phase 2 would consist of the Unit 2 (eastern) power block. The project would also include above-ground and subsurface fiber optic lines.

The overall site layout and generalized land uses are characterized as follows:

1. 250-MW facility including solar generation facilities; on-site switchyard (substation); administration, operations, and maintenance facilities: approximately 1,800 acres.

2. Two wastewater evaporation ponds: Up to 30 acres each (located within the 1,800-acre site).

3. A new generation-tie line to route generated electrical power transmitted from the GSEP switchyard by way of a southeasterly ROW, that would connect to the Southern California Edison 500–230 kV Colorado River substation via the existing Blythe Energy Project Transmission Line between the Julian Hinds and Buck substations.

4. Additional linear facilities off-site, including a 6.5-mile access road and natural gas pipeline.

5. Surface water control facilities for storm water flow and discharge.

6. Temporary construction laydown area(s) within the larger site footprint. No additional laydown areas outside the project footprint are contemplated.

Access to the site would be via a new 6.5-mile long, 24-foot wide (approximately 18.9 acres) paved access road extending north and west from the existing Wiley's Well Road. Wiley's Well Road is accessible by both eastbound and westbound traffic off Interstate 10 at the Wiley's Well Road Interchange. The new access road would be constructed entirely on BLM-administered land.

The BLM's purpose and need for the NEPA analysis of the GSEP project is to respond to Genesis Solar, LLC's application under Title V of FLPMA (43 U.S.C. 1761) for a ROW grant to construct, operate, and decommission a solar thermal facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws. The BLM will decide whether to approve, approve with modification, or deny a ROW grant to Genesis Solar, LLC for the proposed GSEP project. The BLM will also consider amending the California Desert Conservation Act (CDCA) Plan of 1980, as amended, in this analysis. The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not identified in that Plan be considered through the plan amendment process. If the BLM decides to grant a ROW, the BLM would also amend the CDCA Plan.

In the Final EIS, the BLM's Preferred Alternative is the direct dry cooling project alternative with a 250 nominal MW output which includes a CDCA Plan Amendment. In addition to the Preferred Alternative, the Final EIS analyzes the following alternatives: The proposed action with a 250 nominal MW output, wet-cooling technology and an amendment the CDCA Plan to make the area suitable for solar energy development; a reduced acreage alternative which includes a 150 nominal MW output, wet cooling technology, and an amendment to the CDCA Plan to make the area suitable for solar energy development; and an amendment to the CDCA Plan without approving any project. As required under NEPA, the Final EIS analyzes a no action alternative, which would not approve the GSEP or amend the CDCA Plan. The BLM also analyzes an alternative that denies the GSEP, but amends the CDCA Plan to designate the project area as suitable for other possible solar energy power generation projects, and an alternative to deny the project and amend the CDCA Plan to designate the project area as unsuitable for solar energy power generation projects. The BLM will take into consideration the provisions of the Energy Policy Act of 2005 and Secretarial Orders 3283 *Enhancing Renewable Energy Development on the Public Lands* and 3285A1 *Renewable Energy Development by the Department of the Interior* in responding to the GSEP application.

The Final EIS evaluates the potential impacts of the proposed GSEP on air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, and other resources.

A Notice of Availability of the Draft EIS/Staff Assessment for the proposed GSEP and Possible Plan Amendment to the CDCA Plan was published in the **Federal Register** on April 9, 2010 (75 FR 18204). Comments on the Draft RMP Amendment/Draft EIS/Staff Assessment received from the public and internal BLM review were considered and incorporated as appropriate into the Proposed CDCA Plan Amendment/Final EIS. Public comments resulted in the addition of clarifying text and the change in the preferred alternative from wet cooling to dry cooling technology, but did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the Proposed CDCA Plan Amendment may be found in the "Dear Reader" Letter of the Proposed CDCA Plan Amendment/Final EIS and at 43 CFR 1610.5–2. E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 912–7212, and e-mails to *Brenda_Hudgens-Williams@blm.gov.* All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10 and 43 CFR 1610.2 and 1610.5.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2010–21570 Filed 8–27–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement and South Florida and Caribbean Parks Exotic Plant Management Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a final environmental impact statement for the South Florida and Caribbean Parks Exotic Plant Management Plan.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), and the Council on Environmental Quality regulations (40

CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, announces the availability of the final environmental impact statement (FEIS) in abbreviated form for the proposed South Florida and Caribbean Parks Exotic Plant Management Plan. This plan guides the management and control of exotic plants and restoration of native plant communities in nine national parks: Big Cypress National Preserve, Biscayne National Park, Canaveral National Seashore, Dry Tortugas National Park, Everglades National Park, Buck Island Reef National Monument, Christiansted National Historic Site, Salt River Bay National Historic Park and Ecological Preserve, and Virgin Islands National Park. The FEIS identifies and evaluates the proposed plan and two alternatives and their potential environmental consequences and identifies and analyzes appropriate mitigation strategies.

In accordance with the Plant Protection Act of 2000, (7 U.S.C. 7701 *et seq.*), the United States Government has designated certain plants as noxious weeds; many of these are exotic plant species. Approximately 1,200 exotic plant species in Florida and the Caribbean have become established in natural areas, and as many as 4 percent of those exotic plant species have displaced native species. Exotic plants compete aggressively with native plants and are often at an advantage because they have little or no predatory control. Among other problems, exotic plants displace native species, alter native species proportion, degrade or reduce available habitat for threatened and endangered species, consume nutrients, alter fire patterns, reduce recreational opportunities, and clog waterways.

The purpose of the plan/FEIS is to (1) provide a programmatic plan to manage and control exotic plants in nine parks in south Florida and the Caribbean; (2) promote restoration of native species and habitat conditions in ecosystems that have been invaded by exotic plants; and (3) protect park resources and values from adverse effects resulting from exotic plant presence and control activities.

DATES: In December 2003, the NPS met with various Federal, territorial, State, and local government agencies to share information among agencies and elicit issues, concerns, and other relevant information to address during the planning process. Agency representatives participated in meetings in the Virgin Islands, (one on St. John and one on St. Croix), and in a meeting in West Palm Beach, Florida. A Notice of Intent to prepare an environmental impact statement (EIS) for South Florida and Caribbean parks exotic plant management was published in the **Federal Register** on January 22, 2004 (69 FR 3174). Public scoping open houses were held in March 2004 in Cruz Bay, St. John; Christiansted and Frederiksted, St. Croix; and Naples and Homestead, Florida. A project newsletter was also distributed and 40 letters or e-mails were received and used by the interdisciplinary planning team to refine the issues to be addressed in the plan/EIS. The Environmental Protection Agency published its notice of filing of the Draft EIS in the **Federal Register** on September 22, 2006 (71 FR 55463). The NPS notice of availability was published in the **Federal Register** on September 27, 2006 (71 FR 56549).

Following a 60-day public comment period, NPS considered carefully the agency and public comments received, and prepared the FEIS. Not sooner than 30 days from the date of publication of the Notice of Availability for the FEIS in the **Federal Register** by the Environmental Protection Agency the NPS will sign a Record of Decision on the Final Environmental Impact Statement/South Florida and Caribbean Parks Exotic Plant Management Plan. After the Record of Decision is signed, the NPS will publish a Notice of Availability of the Record of Decision on the Final Environmental Impact Statement/South Florida and Caribbean Parks Exotic Plant Management Plan in the **Federal Register**.

ADDRESSES: Electronic copies of the final document will be available online at *http://parkplanning.nps.gov/EVER.* To request a copy contact Sandra Hamilton, Environmental Quality Division, National Park Service, Academy Place, P.O. Box 25287, Denver, Colorado 80225, 303–969–2068. While supplies last, the document can also be picked up in person at the participating parks' headquarters: Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida 34141; Biscayne National Park, 9700 SW 328 Street, Homestead, Florida 33033; Canaveral National Seashore, 212 S. Washington Avenue, Titusville, Florida 32796; Dry Tortugas National Park 40001 State Road 9336, Homestead, Florida 33034; Everglades National Park, 40001 State Road 9336, Homestead, Florida 33034; Buck Island Reef National Monument, Danish Custom House, Kings Wharf, 2100 Church Street #100, Christiansted, St. Croix, Virgin Islands 00820; Christiansted National Historic Site; Salt River Bay National Historic Park and Ecological Preserve, and Virgin Islands National Park, 1300 Cruz Bay Creek, St. John, Virgin Islands 00830.

SUPPLEMENTARY INFORMATION: Three alternatives are identified and potential impacts analyzed in the plan/FEIS. Alternative C, *New Framework for Exotic Plant Management: Increased Planning, Monitoring, and Mitigation, with an Emphasis on Active Restoration of Native Plants,* is the environmentally preferable alternative and the NPS preferred alternative. Alternative C would augment the systematic approach integral to alternative B, described below, and would add an active restoration program to enhance the return of native species to treated areas in selected high-priority areas. Under Alternative C, a decision tool would be applied to determine areas that are appropriate for active restoration, which would occur in park areas that have been previously disturbed and in areas with potential threatened and endangered species habitat or sensitive vegetation communities where a more rapid recovery would be desirable. The active restoration approach for a given treatment area would be determined based on a site-specific evaluation. Other areas in the parks would recover passively. Under Alternative B, New Framework for Exotic Plant Management: Increased Planning, Monitoring, and Mitigation, the parks would apply a systematic approach that would prioritize exotic plants for treatment, monitor effects of those treatments on exotic plants and park resources, and mitigate any adverse effects to park resources, as determined through the monitoring program. Alternative B would employ an adaptive management strategy, using the results of monitoring to adjust treatment methods or mitigation methods to reach the desired future condition of treated areas in the parks. The effectiveness of efforts to control exotic plant invasion of native habitats would increase as a result of uniform recording and storage of information acquired during monitoring and of sharing that information among the nine park units. Under Alternative A, Continue Current Management, the parks would continue to manage exotic plants under the existing management framework.

The parks would continue to treat infestations of exotic plants on an ad hoc basis using a variety of physical, mechanical, chemical, and biological methods and through currently available funding sources.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Sandra Hamilton, Environmental Quality Division, National Park Service, Academy Place, P.O. Box 25287, Denver, Colorado 80225, 303–969–2068.

The responsible official for this final EIS is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: August 16, 2010.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–21550 Filed 8–27–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Prisoners Harbor Wetland Restoration, Santa Cruz Island, Channel Islands National Park, Santa Barbara County, CA; Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service (NPS) has prepared and approved a Record of Decision for the *Final Environmental Impact Statement* for restoration of approximately 3 acres of coastal wetland on Santa Cruz Island, Channel Islands National Park. The requisite no-action "wait period" was initiated April 16, 2010, with the Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS.

Decision: As soon as practical the NPS will begin to implement restoration of palustrine wetlands and deepwater habitat at Prisoners Harbor, as well as remove a berm constricting natural flows in lower Canada del Puerto Creek, in order to reconnect the creek to its floodplain. Other project elements include removing cattle corrals and relocating a scale house to its pre-1960s location, removing eucalyptus and controlling other non-native species, and protecting archeological resources. This alternative was identified and analyzed as the agency-preferred *Alternative B* in the Final EIS (and includes no substantive modifications to the course of action which was described in the Draft EIS). The full range of foreseeable environmental consequences were assessed, and appropriate mitigation measures (developed in consultation with Tribal representatives and other agencies) are included in the approved plan. Both a No Action alternative and one additional "action" alternative (*Alternative C,* which would have restored approximately a third less wetland habitat) were also identified and analyzed. As documented in the Draft and Final EIS, the selected alternative was deemed to be the "environmentally preferred" course of action.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001 or via telephone request at (805) 658–5700.

Dated: July 13, 2010.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010–21566 Filed 8–27–10; 8:45 am]

BILLING CODE 4310–F6–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet September 15–16, 2010, in Washington, DC. The Board will have an orientation session on the morning of September 15, and in the afternoon will tour park sites in the National Capital Region. On September 16, the Board will convene its business meeting from 8:30 a.m., to 4 p.m.

DATES: September 15–16, 2010.

Location: The Dupont Hotel, meeting room Glover Park A, 1500 New Hampshire Avenue, NW.; Washington, DC 20036; 202–448–3848.

FOR FURTHER INFORMATION CONTACT: For further information concerning the National Park System Advisory Board or to request to address the Board, contact Ms. Shirley Sears Smith, Office of Policy, National Park Service, 1201 I Street, NW., 12th Floor, Washington, DC 20005; telephone 202–354–3955; e-mail *Shirley_S_Smith@nps.gov.*

SUPPLEMENTARY INFORMATION: On September 15, the Board will convene from 8:30 a.m. to 1:15 p.m., for an orientation session for Board members, followed by a tour of national park sites of the National Capital Region. The Board will convene its business meeting on September 16, at 8:30 a.m., and adjourn at 4 p.m. During the course of the two days, the Board expects to be addressed by Secretary of the Interior Ken Salazar and National Park Service Director Jonathan Jarvis, and will be briefed by park officials on matters including education, science, funding, and public engagement. Other officials of the Department of the Interior and the National Park Service may address the Board, and other miscellaneous topics and reports may be covered.

The Board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, at 1201 I Street, NW., Washington, DC 20005.

Dated: August 25, 2010.

Bernard Fagan,

Chief, Office of Policy.

[FR Doc. 2010–21552 Filed 8–27–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Rim of the Valley Corridor Special Resource Study, Los Angeles and Ventura Counties, CA; Notice of Scoping

Summary: Notice is hereby given in accordance with provisions of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and the Council on Environmental Quality's implementing regulations (40 CFR 1502.9(c)) that public scoping has been initiated for a conservation planning and environmental impact analysis

process to identify and assess potential impacts of alternative resource protection and other considerations within the Rim of the Valley Corridor Special Resource Study area in Los Angeles and Ventura counties of California. The purpose of the scoping process is to elicit early public comment regarding issues and concerns, alternatives, and the nature and extent of potential environmental impacts (and as appropriate, mitigation measures) which should be addressed.

Background: As authorized by the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229–May 2008), the National Park Service (NPS) is conducting a special resource study of the area known as the Rim of the Valley Corridor, generally including the mountains encircling the San Fernando, La Crescenta, Santa Clarita, Simi, and Conejo Valleys in California. The study area also includes the majority of the existing Santa Monica Mountains National Recreation Area. The study will explore many issues including: Protection of wildlife habitat and linkages between open space areas; completion of the Rim of the Valley Trail system; preserving recreational opportunities and facilitating access to recreation for a variety of users; protection of rare, threatened or endangered species and rare or unusual plant communities and habitats; and identifying the needs of communities within and around the study area.

In conducting the Rim of the Valley Corridor Special Resource Study, the NPS will evaluate the national significance of the area's natural and cultural resources. The NPS will also assess the area's suitability and feasibility to be a unit of the National Park System. Factors which the NPS study team will evaluate include: Whether the study area includes types or quality of resources not already adequately represented in the National Park System; whether long-term protection and public use of the area are feasible; and whether the area can be adequately protected and administered at a reasonable cost. The recommendations of the NPS may vary for different portions of the study area.

The authorizing statute directs the NPS to determine the suitability and feasibility of designating all or a portion of the corridor as a unit of the Santa Monica Mountains National Recreation Area. It also directs the NPS to determine the methods and means for the protection and interpretation of this corridor by the NPS, other Federal, State, or local government entities or private or non-profit organizations.

The NPS will also consider: Alternative strategies for management, protection and use of significant resources within the overall study area, including management by other public agencies or the private sector; technical or financial assistance available from established programs or special initiatives and partnerships; alternative designations other than a national park, or as an expansion unit of Santa Monica Mountains National Recreation Area; and cooperative management by NPS and other entities.

Public Engagement: During the study process, a range of alternatives will be developed in consultation with Federal, State and local governments and interested members of the public, groups, and organizations. The NPS will conduct an environmental review of the alternatives and potential consequences of resource protection considerations as part of the Rim of the Valley Corridor Special Resource Study. At this time, it has not been determined whether an Environmental Assessment or an Environmental Impact Statement will be prepared, however, this scoping process will aid in the preparation of either document. The public will have several opportunities to comment and participate throughout the study process. Additionally, the public will be afforded the opportunity to review and comment on the ensuing environmental document following its release. For initial scoping and alternatives development, the most useful comments are those that provide the NPS with assistance in identifying issues and concerns which should be addressed, or providing important information germane to this study. All responses to this Notice will also be used to establish a mailing list of interested persons, organizations, and agencies that desire to receive further information as the environmental document is developed.

The public scoping period for the Rim of the Valley Corridor Special Resource Study will conclude—and all comments must be postmarked or transmitted no later than—October 29, 2010. Interested individuals, organizations, and agencies wishing to provide written comments on issues or concerns should respond to: National Park Service, Rim of the Valley Corridor Special Resource Study, 570 West Avenue 26, Suite 175, Los Angeles, CA 90065. Comments may also be transmitted through the study's Web site listed below.

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.

At this time the following scoping meetings (public workshops) have been scheduled: September 14 in Chatsworth, September 15 in Los Angeles, September 21 in Santa Clarita, September 22 in Thousand Oaks, October 4 in Calabasas, October 5 in Tujunga, and October 6 in Altadena. Complete details of dates, times and locations of the meetings will be posted on the project Web site (noted below). Complete information will also be conveyed to local and regional press media, and will be advertised in a newsletter which will be distributed to stakeholders and interested parties.

Information updates about the study process and opportunities for the public to participate will be distributed via direct mailings, regional and local news media and the Rim of the Valley Corridor Special Resource Study Web site (*http://www.nps.gov/pwro/rimofthevalley*). The study team may also be contacted via e-mail at *pwr_rimofthevalley@nps.gov.*

Further Information: Availability of the forthcoming draft environmental document for review and written comment will be announced by local and regional news media, the above listed Web site, and direct mailing. At this time the draft environmental review document is anticipated to be available for public review and comment in 2013 and the draft and final report to Congress available in 2014. Comments on the draft document will be fully considered and responded to as appropriate in the final document. The official responsible for the initial recommendation will be the Regional Director, Pacific West Region, National Park Service. The official responsible for amending or ratifying the recommendation and transmitting the final document to the Secretary of the Interior will be the Director of the National Park Service. The final document will identify the alternative that, in the professional judgment of the Director of the National Park Service, is the most effective and efficient method for protecting significant resources and providing for public enjoyment. The Secretary of the Interior subsequently will forward the completed study along with a recommendation regarding the Secretary's preferred management option for the area to Congress for their consideration. It is anticipated that the final study report will be available in 2014.

Dated: July 30, 2010.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010–21551 Filed 8–27–10; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N183]
[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. Both laws requires that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before September 29, 2010. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by September 29, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our[Doc the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

Endangered Species

Applicant: Knoxville Zoological Gardens, Knoxville, TN; PRT-19934A

The applicant requests a permit to export two captive-hatched Chinese alligators (*Alligator sinensis*) to Africam, S.A, Puebla, Mexico, for the purpose of enhancement of the survival of the species.

Applicant: Rocky Mountain Wildlife Conservation Center, Keenesburg, CO;

PRT-18346A

The applicant requests a permit to import seven captive-born tigers (*Panthera tigris*) from Canada and Mexico, for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gus Boniello, Golden Bridge, NY; PRT-19933A

Applicant: Frank DeGennaro, Monroe, NY; PRT-19931A

Applicant: Anthony Casola, Bronx, NY; PRT-19930A

The following applicant requests a permit to re-export a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Roberto Delgado, Garza Garcia, NL MX; PRT-19421A

Endangered Marine Mammals and Marine Mammals

Applicant: Dr. Iskande Larkin, University of Florida, Gainesville, FL; PRT-038448

The applicant requests amendment and renewal of the permit to take wild and captive-held Florida manatees (*Trichechus manatus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Pennsylvania State University, University Park, PA; PRT-14287A

The applicant requests a permit to import biological samples of polar bears (*Ursus maritimus*) from Norway for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1–year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: August 20, 2010

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–21475 Filed 8–27–10; 8:45 am]

BILLING CODE ????–??–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW03000/L51050000.EA0000/LVRCF1000700241A.MO#4500013866;10–08807; TAS:14X5017]

Notice of Temporary Closures and Restrictions on Specific Uses of Public Lands in Pershing County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closures and restrictions.

SUMMARY: Notice is hereby given that under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Winnemucca District, Black Rock Field Office will implement and enforce the following temporary closures and restrictions to protect public safety and resources on public lands within and adjacent to the Burning Man Festival on the Black Rock Desert playa.

DATES: The temporary restrictions will be in effect until September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Gene Seidlitz, District Manager, Bureau of Land Management, Winnemucca District, 5100 E. Winnemucca Boulevard, Winnemucca, NV 89445–2921, telephone: (775) 623–1500, e-mail: *gene_seidlitz@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: These temporary restrictions affect public lands on and adjacent to the Burning Man Event conducted on the Black Rock Desert playa within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area in portions of Humboldt, Pershing and Washoe counties, Nevada. The legal description of the affected public lands is:

I. 2010 Event Area:

Mount Diablo Meridian, Nevada

Unsurveyed T. 33 N., R. 24 E.,
- Secs. 4, and 5, portions within 50 yards of the Event Entrance Road;

Unsurveyed T. 33½ N., R. 24 E.,
- Sec. 25;
- Sec. 26 and 27, portions within event perimeter fence and 50 yards outside the fence;
- Sec. 33 and 34, portions within 50 yards of the Event Entrance Road;
- Sec. 35, portions within event perimeter fence, 50 yards outside the fence and within 50 yards of the Event Entrance Road;
- Sec. 36, portions within event perimeter fence, 50 yards outside the fence and the Airport tie-down area.

Unsurveyed T. 34 N., R. 24 E.,
- Secs. 25, 26, 34, and 35, portions within event perimeter fence and 50 yards outside the fence.
- Sec. 36.

Unsurveyed T. 34 N., R. 25 E.,
- Secs. 21, 28, and 33, portions within event perimeter fence and 50 yards outside the fence.

The event area comprises 3,347 acres, more or less.

II. Public Closure Area:

Mount Diablo Meridian, Nevada

Unsurveyed T. 33 N., R. 24 E.,
- Sec. 1, N½, portion west of the east playa road;
- Sec. 2, N½;
- Sec. 3, N½, SW¼;
- Sec. 4, portion east of Washoe Co. Rd. 34 and outside the Event Area;
- Sec. 5, E½, portion east of Washoe Co. Rd. 34 and outside the Event Area;
- Sec. 8, NE¼;
- Sec. 9, N½;
- Sec. 10, NW¼.

Unsurveyed T. 33½ N., R. 24 E.,
- Secs. 26 and 27, portions outside the Event Area;
- Sec. 28, portion east of Washoe Co. Rd. 34;
- Sec. 33, portions east of Washoe Co. Rd. 34 and outside the Event Area;
- Secs. 34, 35 and 36, portions outside the Event Area.

Unsurveyed T. 34 N., R. 24 E.,
- Sec. 23, S½;
- Sec. 24, S½;
- Sec. 25 & 26; portions outside the Event Area;
- Sec. 27, SE¼, E½; NE½, E½ SW¼;
- Sec. 33, SE¼, S½; NE¼, NE¼ NE¼;
- Secs. 34 and 35, portions outside the Event Area;

T. 33 N., R. 25 E.,
- Sec. 4, Lots 2, 3, 4 and 5, portions west of the east playa road.

Unsurveyed T. 34 N., R. 25 E.,
- Sec. 16, S½;
- Sec. 21, portion outside the Event Area;
- Sec. 22, SW¼, W½; NW¼;
- Sec. 27, W½;
- Sec. 33, portion west of the east playa road and outside the Event Area;
- Sec. 34; W½, portion west of the east playa road.

The public closure area comprises 9,445 acres, more or less.

The closure and temporary restrictions are necessary to provide a safe environment for the participants of the Burning Man Festival and to members of the public visiting the Black Rock Desert and to protect public land resources by addressing law enforcement and public safety concerns associated with the Burning Man Festival. The Burning Man Festival is held on public lands administered by the Bureau of Land Management. It is expected to attract approximately 48,000 participants to a remote rural area, far from urban infrastructure and support, including law enforcement, public safety, transportation, and communication services. During the festival the associated city becomes the tenth largest metropolitan area in Nevada. This event is authorized on public lands under Special Recreation Permit #NV–025–06–01.

The vast majority of Burning Man Festival participants do not cause any problems for the event organizers or the BLM. Actions by a few participants at previous events have resulted in law enforcement and public safety incidents similar to those observed in urban areas of similar size. Incidents that have required BLM law enforcement action in prior years include the following: Aircraft crashes; motor vehicle accidents with injuries within and outside the event (a temporary fence is installed around the event perimeter); fighting; sexual assaults; assaults on law enforcement officers; reckless or threatening behavior; crimes against property; crowd control issues; issues associated with possession and use of alcoholic beverages; persons acting in a manner where they may pose a danger to themselves or to others; possession, use, and distribution of controlled substances; and increased use of public lands outside the event perimeter.

The Burning Man Festival takes place within Pershing County, a rural county with a small population and a small Sheriff's Department. The county has

limited ability to provide additional law enforcement officers to work at the Festival. The temporary closure and the temporary restrictions are necessary to enable BLM law enforcement personnel to provide for public safety and protect the environment on public lands, as well as support state and local law enforcement agencies with enforcement of existing laws.

A temporary closure and restriction order, under the authority of 43 CFR 8364.1, is used because it is more appropriate than establishing Supplementary Rules. A temporary closure and restriction order is specifically tailored to the time frame and restrictions on uses or activities that are necessary to provide a safe environment for the public and for participants in the Burning Man Festival, and protect public land resources, while avoiding imposing restrictions that may not be necessary during the remainder of the year.

The BLM will post information signs about the temporary restrictions at main entry points around the area. This temporary restriction order also will be posted in the BLM Winnemucca District Office. Maps of the affected area and other documents associated with these temporary restrictions are available at the Winnemucca District Office at the address above.

Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following closures and restrictions within and adjacent to the Burning Man Festival on the Black Rock Desert playa:

I. Event Area—Between August 27, 2010, and September 17, 2010 Inclusive

A. Aircraft Landing

The event area is closed to aircraft landing, taking off, or taxiing. Aircraft is defined in Title 18 U.S.C., section 31 (a)(1) and includes lighter-than-air craft and ultra-light craft. The following exceptions apply:

1. Aircraft operations conducted through the authorized event landing strip and such ultra-light and helicopter take-off and landing areas designated for Burning Man event staff and participants, law enforcement, and emergency medical services.

2. Helicopters providing emergency medical services may land in other locations when required for medical incidents.

3. Landings or take-offs of lighter-than-air craft previously approved by the BLM authorized officer.

B. Alcohol

1. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion is prohibited.

2. Possession of alcohol by minors.

(a) The following are prohibited:

(1) Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.

(2) Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

(b) This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

3. Operation of a motor vehicle while under the influence.

(a) Title 43 CFR 8341.1(f)3 prohibits the operation of an off-road motor vehicle on public land while under the influence of alcohol, narcotics, or dangerous drugs.

(b) In addition to the prohibition found in 43 CFR 8341.1(f)3, it is prohibited for any person to operate or be in actual physical control of a motor vehicle while:

(1) The operator is under the combined influence of alcohol, a drug, or drugs to a degree that renders the operator incapable of safe operation of that vehicle; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath.

(c) Tests:

(1) At the request or direction of any law enforcement officer authorized by the Department of the Interior to enforce this closure and restriction order, who has probable cause to believe that an operator of a motor vehicle has violated a provision of paragraph (a) or (b) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) Presumptive levels:

(1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (b)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or multiple drugs, or any combination thereof.

4. Definitions:

(a) Open container: Any bottle, can, or other container that contains an alcoholic beverage, if that container does not have a closed top or the lid for which the seal has been broken. If a container has been opened one or more times and its lid or top has been replaced, that container is an open container.

(b) Possession of an open container includes any open container that is physically possessed by a driver or operator and is adjacent to and reachable by that driver or operator. This includes but is not limited to containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

C. Drug Paraphernalia

1. The possession of drug paraphernalia is prohibited.

2. Definition: Drug paraphernalia means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of any state or Federal law, or regulation issued pursuant to law.

D. Disorderly Conduct

1. Disorderly conduct is prohibited.

2. Definition: Disorderly conduct means that an individual, with the intent of recklessly causing public

alarm, nuisance, jeopardy, or violence; or recklessly creating a risk thereof:

(a) Engages in fighting or violent behavior.

(b) Uses language, an utterance or gesture, or engages in a display or act that is physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

E. Eviction of Persons

1. The event area is closed to any person for the following:

(a) Has been evicted from the event by the permit holder, Black Rock City LLC, (BRC LLC), whether or not the eviction was requested by the BLM.

(b) Has been ordered by a BLM law enforcement officer to leave the area of the permitted event.

2. Any person evicted from the event forfeits all privileges to be present within the perimeter fence or anywhere else within the event area even if they possess a ticket to attend the event.

F. Fires

The ignition of fires on the surface of the Black Rock Playa without a burn blanket or burn pan is prohibited.

G. Fireworks

The use, sale or possession of personal fireworks is prohibited except for uses of fireworks approved by BRC LLC and used as part of a Burning Man sanctioned art burn event.

H. Motor Vehicles

1. The event area is closed to motor vehicle use, except as provided below.

Motor vehicles may be operated within the Event Area under these circumstances:

(a) Participant arrival and departure on designated routes;

(b) Vehicles operated by BRC LLC staff or contractors and service providers on behalf of BRC LLC. During the event, from 12:01 a.m. Monday, August 30, 2010, through 11:59 p.m. Monday, September 6, 2010, these vehicles must display evidence of event registration at all times in such manner that it is visible from the rear of the vehicle while the vehicle is in motion;

(c) BLM, medical, law enforcement, and firefighting vehicles;

(d) Mutant vehicles, art cars, vehicles used by disabled drivers and displaying disabled driver license plates or placards, or other vehicles registered with the Burning Man event organizers and operated within the scope of that registration. Prior to commencement of the event and official issuance of registration documents, such vehicles may be operated for arrival, testing and demonstration purposes only. During the event, from 12:01 a.m. Monday, August 30, 2010, through 11:59 p.m. Monday, September 6, 2010, such vehicles must display evidence of registration at all times in such manner that it is visible from the rear of the vehicle while the vehicle is in motion;

(e) Motorized skateboards or Go-Peds with or without handlebars.

2. Definitions:

(a) A motor vehicle is any device designed for and capable of travel over land and which is self-propelled by a motor, but does not include any vehicle operated on rails or any motorized wheelchair;

(b) Motorized wheelchair means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion.

I. Public Camping

The event area is closed to public camping with the following exception: Burning Man event ticket holders who are camped in designated areas provided by BRC LLC, and ticket holders who are camped in the authorized "pilot camp." BRC LLC authorized staff, contractors, and BLM-authorized event management-related camps are exempt from this closure.

J. Public Use

The event area is closed to use by members of the public unless that person: Possesses a valid ticket to attend the event; is an employee or authorized volunteer with the BLM, a law enforcement agency, emergency medical service provider, fire protection provider, or another public agency working at the event and the employee is assigned to the event; is a person working at or attending the event on behalf of the event organizers, BRC LLC; or is authorized by BRC LLC to be onsite prior to the commencement of the event for the primary purpose of constructing, creating, designing or installing art, displays, buildings, facilities or other items and structures in connection with the event.

K. Waste Water Discharge

The dumping or discharge to the ground of grey water is prohibited. Grey water is water that has been used for cooking, washing, dishwashing, or bathing and contains soap, detergent, food scraps, or food residue.

L. Weapons

1. The possession of any weapon is prohibited.

2. The discharge of any weapon is prohibited.

3. The prohibitions above shall not apply to county, state, tribal, and Federal law enforcement personnel, or any person authorized by Federal law to possess a weapon. "Art projects" that include weapons and are sanctioned by BRC LLC will be permitted after obtaining authorization from the BLM authorized officer.

4. Definitions:

(a) Weapon means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand thrown spear, sling shot, irritant gas device, electric stunning or immobilization device, explosive device, any implement designed to expel a projectile, switch blade knife, any blade which is greater than 10 inches in length from the tip of the blade to the edge of the hilt or finger guard nearest the blade (e.g., swords, dirks, daggers, machetes), or any other weapon the possession of which is prohibited by state law. Exception: The regulation does not apply in a kitchen or cooking environment or where an event worker is wearing or utilizing a construction knife for their duties at the event

(b) Firearm means any pistol, revolver, rifle, shotgun, or other device which is designed to, or may be readily converted to expel a projectile by the ignition of a propellant.

(c) Discharge means the expelling of a projectile from a weapon.

II. Public Closure Area

A. Between August 27, 2010, and September 17, 2010, Inclusive

1. Public Camping

The Public Closure area is closed to public camping.

2. Discharge of Weapons

Discharge of weapons as defined in paragraph (L)(2) of Section (I) is prohibited.

B. Between August 30, 2010, and September 6, 2010, Inclusive

1. Aircraft Landing

The public closure area is closed to aircraft landing, taking off, or taxiing except as described in paragraph (A) of Section I.

2. Disorderly Conduct

Disorderly conduct as defined in paragraph (D)(2) of Section I is prohibited.

3. Eviction of Persons

(a) The Public Closure Area is closed to any person who:

(1) Has been evicted from the event by the permit holder, BRC LLC, whether or

not the eviction was requested by the BLM.

(2) Has been ordered by a BLM law enforcement officer to leave the area of the permitted event.

(b) Any person evicted from the event forfeits all privileges to be present within the public closure area even if he or she possesses a ticket to attend the event.

4. Fireworks

The use, sale or possession of personal fireworks is prohibited.

5. Public Use

Public use is prohibited, except for:

(a) passage through, without stopping, the public closure area on the West or East Playa Roads; and

(b) pedestrians with Burning Man tickets outside the fence.

6. Motor Vehicles

The public closure area is closed to motor vehicle use, except for passage through, without stopping, the public closure area on the West or East Playa Roads. Motor vehicle is defined in paragraph (H)(2) of Section (I).

7. Waste Water Discharge

The dumping or discharge to the ground of grey water is prohibited. Grey water is water used for cooking, washing, dishwashing, or bathing and contains soap, detergent, food scraps, or food residue.

8. Weapons

The possession of any weapon as defined in paragraph (L)(4) of Section (I) is prohibited except weapons within motor vehicles passing through the closure area, without stopping on the West or East Playa Roads.

Any person who violates the above rules and restrictions may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for at 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Gene Seidlitz,

District Manager, Winnemucca District.

[FR Doc. 2010–21553 Filed 8–25–10; 4:15 pm]

BILLING CODE 4310–HC–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 Liquid Crystal Display Devices and Products Interoperable with the Same,* DN 2751; 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 Chimei-Innolux Corporation, Chimei Optoelectronics USA, Inc. and Innolux Corporation on August 24, 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 liquid crystal display devices and products interoperable with the same. The complaint names as respondents Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, NY; Sony Electronics Corporation of San Diego, CA; and Sony Computer Entertainment America, LLC of Foster City, CA.

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. 2751") 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: August 24, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–21527 Filed 8–27–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Issuance of Revised Users' Manual for Commission Mediation Program for Investigations Under Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a revised Users' Manual for its program for the mediation of investigations under section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.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: On November 8, 2008, the Commission published notice that it had approved the initiation of a voluntary pilot mediation program for investigations under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"). 73 FR 65615 (Nov. 8, 2008).

The Commission has determined to issue a revised Users' Manual for its program for the mediation of investigations under section 337 of the Tariff Act of 1930. The revised Users' Manual reaffirms the authority of administrative law judges and the Commission under the Administrative Procedure Act to require attendance at a settlement conference, including the use of alternative dispute resolution; reaffirms the confidential nature of mediation proceedings; provides that parties will receive materials regarding the program upon the filing of a complaint and certify receipt and reading/discussion thereof; and provides that the Commission will maintain an open list of private mediators in addition to the roster of pre-screened pro-bono mediators.

The authority for the Commission's determination is contained in the Administrative Procedure Act, as amended, *see* 5 U.S.C. 556(c)(6)–(8), 572–74, 583, and in sections 335 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1335, 1337.

Issued: August 25, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–21530 Filed 8–27–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0014]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Tax Paid Transfer and Registration of Firearm.

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 October 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, 244 Needy Road, Martinsburg, WV 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:* Application For Tax Paid Transfer and Registration of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 4 (5320.4). 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. ATF F 4 (5320.4) is required to apply for the transfer and registration of a National Firearms Act (NFA) firearm. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State and local law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 11,065 respondents will complete a 4 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 44,260 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, 2 Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: August 24, 2010.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. 2010–21543 Filed 8–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0009]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application to Register as an Importer of U.S. Munitions Import List Articles.

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 October 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree Winger, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Register as an Importer of U.S. Munitions Import List Articles.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 4587 (5330.4). 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 purpose of this information collection is to allow ATF to determine if the registrant qualifies to engage in the business of importing a firearm or firearms, ammunition, and the implements of war, and to facilitate the collection of registration fees.

(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 300 respondents will complete a 30-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 150 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: August 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–21545 Filed 8–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0040]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application for an amended Federal firearms license.

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 October 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Power, Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 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:* Application For An Amended Federal Firearms License.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5300.38. 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 form is used when a Federal firearms licensee makes application to change the location of the firearms business premises. The applicant must certify that the proposed new business premises will be in compliance with State and local law for that location.

(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 18,000 respondents will complete a 1 hour and 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 22,500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: August 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–21525 Filed 8–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0018]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application for Federal firearms license.

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 October 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Power, Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 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:* Application for Federal Firearms License

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 7 (5310.12). 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. Each person intending to engage in business as a firearms or ammunition importer or manufacturer, or dealer in firearms shall file an application with the required fee with ATF in accordance with the instructions on the form. The information requested on the form establishes eligibility for the license. The duration of the license is for a 3 year period.

(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 13,000 respondents will complete a 1 hour and 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16,250 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street, NE, Washington, DC 20530.

Dated: August 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–21535 Filed 8–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Submission for OMB Review; Comment Request.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number); e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration (MSHA), Office

of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/ Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Program to Prevent Smoking Underground and in Hazardous Surface Areas.

OMB Control Number: 1219–0041.

Affected Public: Business or other for-profit.

Total Estimated Number of Respondents: 144.

Total Number of Responses: 144.

Total Estimated Annual Burden Hours: 72.

Total Estimated Annual Cost Burden (operating/maintaining): $6,098.40.

Description: Section 317(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 877(c), and 30 CFR 75.1702 prohibit persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Under the Mine Act and § 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, etc. Section 75.1702–1 requires that the mine operator submit the program for searching miners for smoking materials to MSHA for approval. The purpose of the program is to ensure that a fire or explosion hazard does not occur. Section 103(h) of the Mine Act, 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. For additional information, see related notice published in the **Federal Register** on June 24, 2010, (Vol. 75 page 36120).

Dated: August 24, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–21472 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 24, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–2443 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed information collection requirements are necessary for the proper performance of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Access to Employee Exposure and Medical Records (29 CFR 1910.1020)

OMB Control Number: 1218–0065.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 690,591.

Estimated Total Annual Burden Hours: 665,009.

Estimated Total Annual Costs Burden (Excludes Hourly Wage Costs): $0.

Description: Under the authority granted by the Occupational Safety and Health Act of 1970, OSHA published a health regulation governing access to worker exposure monitoring data and medical records. This regulation does not require employers to collect any information or to establish any new systems of records. Rather, it requires that employers provide workers, their designated representatives, and OSHA with access to worker exposure monitoring and medical records, and any analyses resulting from these records that employers must maintain under OSHA's toxic chemical and harmful physical agent standards. In this regard, the regulation specifies requirements for record access, record retention, worker information, trade secret management, and record transfer. Accordingly, the Agency attributes the burden hours and costs associated with exposure monitoring and measurement, medical surveillance, and the other activities required to generate the data governed by the regulation to the health standards that specify these activities; therefore, OSHA did not include these burden hours and costs in the ICR.

Access to exposure and medical information enables workers and their

designated representatives to become directly involved in identifying and controlling occupational health hazards, as well as managing and preventing occupationally-related health impairment and disease. Providing the Agency with access to the records permits it to ascertain whether or not employers are complying with the regulation, as well as the recordkeeping requirements of its other health standards; therefore, OSHA access provides additional assurance that workers and their designated representative are able to obtain the data they need to conduct their analyses.

For additional information, see the related 60-day preclearance notice published in the **Federal Register**, April 26, 2010, (Vol. 75, page 21662).

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–21529 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number); e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/ Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed.

OMB Control Number: 1219–0138.

Affected Public: Business or other for-profit.

Total Estimated Number of Respondents: 21.

Total Number of Responses: 251.

Total Estimated Annual Burden Hours: 4,255.

Total Estimated Annual Cost Burden (operating/maintaining): $303,512.

Description: The Safety Standards for Underground Coal Mine Ventilation Belt Entry rule provides safety requirements for the use of the conveyor belt entry as a ventilation intake to course fresh air to working sections and areas where mechanized mining equipment is being installed or removed in mines with three or more entries. This rule establishes additional protective provisions that mine operators must follow if they want to use belt air to ventilate working sections. For additional information, see related notice published in the **Federal Register** on June 24, 2010 (Vol. 75 page 36121–36122).

Dated: August 24, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–21514 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,376]

Wacker Neuson Corporation, a Subsidiary of Wacker Neuson SE, Menomonee Falls, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated August 17, 2010, a company official requested administrative reconsideration of the affirmative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The certification of eligibility was issued on July 30, 2010. The Notice of determination was published in the **Federal Register** on August 13, 2010 (75 FR 49530). The workers produce a variety of construction equipment and are not separately identifiable by product line.

The initial investigation resulted in a positive determination based on the findings that a significant proportion or number of the workers at the subject firm were totally or partially separated, or threatened with such separation, that the subject firm has shifted to a foreign country the production of articles like or directly competitive with the construction equipment produced by the workers, and that this shift of production contributed importantly to worker group separations at the subject firm.

In the request for reconsideration, the company official states that the shift abroad did not contribute importantly to worker separations at the subject firm because the article shifted required only a few workers and that once the work was shifted abroad, the workers were reassigned to other product lines. The company official further states that the separated workers have been recalled to work because the production of the other lines have increased despite the shift of production of the one line of construction equipment to the Philippines.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to

determine whether the workers do meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–21398 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,619]

Chrysler, LLC; Twinsburg Stamping Plant, Including On-Site Leased Workers from Caravan Knight Facilities Management LLC, Wackenhut Security, CR Associates, and Syncreon, Twinsburg, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 4, 2009, applicable to workers of Chrysler, LLC, Twinsburg Stamping Plant, Twinsburg, Ohio. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9282). The certification was amended on June 29, 2009 and August 28, 2009 to include on-site leased workers from Caravan Knight Facilities Management LLC, Wackenhut Security, and CR Associates. The notices were published in the **Federal Register** on July 14, 2009 (74 FR 34042) and September 22, 2009 (74 FR 48297–48298), respectively.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of metal automotive stampings, a substantial proportion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Syncreon were employed on-site at the Twinsburg, Ohio location of Chrysler, LLC, Twinsburg Stamping Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers. Based on these findings, the Department is amending this certification to include workers leased from Syncreon working on-site at the Twinsburg, Ohio location of Chrysler, LLC, Twinsburg Stamping Plant.

The amended notice applicable to TA–W–64,619 is hereby issued as follows:

All workers of Chrysler, LLC, Twinsburg Stamping Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, Wackenhut Security, CR Associates, and Syncreon, Twinsburg, Ohio, who became totally or partially separated from employment on or after December 2, 2007, through February 4, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–21395 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,631]

Chrysler, LLC, Detroit Axle Plant, Including On-Site Leased Workers from Caravan Knight Facilities Management LLC, and Syncreon, Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 12, 2009, applicable to workers of Chrysler, LLC, Detroit Axle Plant, Detroit, Michigan. The notice was published in the **Federal Register** on February 2, 2009 (74 FR 5870). The notice was amended on March 4, 2010 to include on-site leased workers from Caravan Knight Facilities Management LLC. The notice was published in the **Federal Register** on March 12, 2010 (75 FR 111914).

At the request of a company official and the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive axles, a substantial proportion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Syncreon were employed on-site at the Detroit, Michigan location of Chrysler, LLC, Detroit Axle Plant.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers. Based on these findings, the Department is amending this certification to include workers leased from Syncreon, working on-site at the Detroit, Michigan location of Chrysler, LLC, Detroit Axle Plant.

The amended notice applicable to TA–W–64,631 is hereby issued as follows:

All workers of Chrysler, LLC, Detroit Axle Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, and Syncreon, Detroit, Michigan, who became totally or partially separated from employment on or after December 8, 2007, through January 12, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–21396 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,758]

Bluescope Buildings North America, Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Butler Manufacturing Company, Laurinburg, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor

issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 2010, applicable to workers of BlueScope Buildings North America, Laurinburg, North Carolina. The notice was published in the **Federal Register** on June 7, 2010 (75 FR 32224).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to prefabricated metal building components.

New information shows that some workers separated from employment at BlueScope Buildings North America had their wages reported through a separate unemployment insurance (UI) tax account under the name Butler Manufacturing Company, a division of BlueScope Buildings North America.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of prefabricated metal building components to Mexico.

The amended notice applicable to TA–W–73,758 is hereby issued as follows:

All workers of BlueScope Buildings North America, including workers whose unemployment insurance (UI) wages are reported through Butler Manufacturing Company, Laurinburg, North Carolina, who became totally or partially separated from employment on or after March 19, 2009, through May 18, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 13th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–21399 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,784]

Chrysler Group LLC, Formally Known as Chrysler LLC, Kenosha Engine Plant, Including On-Site Leased Workers From Caravan Knight Facilities Management LLC and Syncreon, Kenosha, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 2, 2009, applicable to workers of Chrysler Group LLC, formally known as Chrysler, LLC, Kenosha Engine Plant, Kenosha, Wisconsin. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57340). The notice was amended on May 10, 2010 to include on-site leased workers from Caravan Knight Facilities Management LLC. The notice was published in the **Federal Register** on June 16, 2010 (75 FR 34170–34171).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities in production of V–6 automobile engines.

The company reports that workers leased from Syncreon were employed on-site at the Kenosha, Wisconsin location of Chrysler Group LLC, formally known as Chrysler, LLC, Kenosha Engine Plant.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers. Based on these findings, the Department is amending this certification to include workers leased from Sycreon working on-site at the Kenosha Engine Plant.

The amended notice applicable to TA–W–70,784 is hereby issued as follows:

All workers at Chrysler Group LLC, formally known as Chrysler, LLC, Kenosha Engine Plant, including on-site leased workers from Caravan Knight Facilities Management LLC and Syncreon, Kenosha, Wisconsin, who became totally or partially separated from employment on or after May 27, 2008, through September 2, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 13th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–21397 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of August 9, 2010 through August 13, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such

workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1- year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,956	Jasper Chair Company	Jasper, IN	November 19, 2008.
73,302	Wolfe Dye & Bleach Works, Inc	Shoemakersville, PA	January 7, 2009.
73,587	ArcelorMittal Weirton, Inc., Leased Workers from The Hudson Company.	Weirton, WV	February 26, 2009.
74,001	Connextions, Inc., Sprint Operating Unit	Concord, NC	April 20, 2009.
74,460	Sing Fei, Inc	San Francisco, CA	July 24, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,734	Nukote International, Inc	Rochester, NY	October 30, 2008.
72,896	Staffmark, Working On Site at Leach International	Buena Park, CA	November 18, 2008.
72,936	Current Medicine Group, LLC, Springs Science+Business Media Finance, Inc.	Philadelphia, PA	November 19, 2008.

TA–W No.	Subject firm	Location	Impact date
73,450	Cytec Industries, Inc., Corporate Service Employees, Employee Reporting to Woodland Park, NJ.	Woodland Park, NJ	January 29, 2009.
73,450A	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Winona, MN	January 29, 2009.
73,450B	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Greenville, TX	January 29, 2009.
73,450C	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc..	Piedmont, SC	January 29, 2009.
73,450D	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Anaheim, CA	January 29, 2009.
73,450E	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Havre De Grace, MD	January 29, 2009.
73,450F	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Smyrna, GA	January 29, 2009.
73,450G	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Westwego, LA	January 29, 2009.
73,450H	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Mount Pleasant, TN	January 29, 2009.
73,450I	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Stamford, CT	January 29, 2009.
73,450J	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	North Augusta, SC	January 29, 2009.
73,450K	Cytec Industries, Inc., Corporate Service Employees, Leased Workers from Advanced Personnel, etc.	Tempe, AZ	January 29, 2009.
73,513	Farley's and Sathers Candy Company, Inc., On-site Leased Workers from Doherty Staffing Solutions.	Round Lake, MN	February 17, 2009.
73,577	Aigis Mechtronics, Inc., A Subsidiary of Nortek, Inc., Leased Workers of Adecco Employment Services.	Winston-Salem, NC	February 22, 2009.
73,635	The Boeing Company, Engineering Operations, etc., Off-Site Workers Reporting to St. Louis, MO.	St. Louis, MO	February 24, 2009.
73,635A	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	St. Charles, MO	February 24, 2009.
73,635B	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	Hazelwood, MO	February 24, 2009.
73,753	Lodging by Liberty, Inc., Brown Jordan International, Inc.; BJI Employee Services; etc.	Liberty, NC	March 15, 2009.
73,775	Eli Lilly and Company, Chemical Process Research and Development Pilot Plant.	Indianapolis, IN	March 22, 2009.
73,796	Keane, Inc., Teachers Insurance Annuity Association—College Retirement Equities Fund.	Denver, CO	March 26, 2009.
73,806	Multina, USA	Plattsburgh, NY	March 18, 2009.
73,849	LTX–Credence Corporation, Leased Workers from ATR International, Inc.	Hillsboro, OR	March 16, 2009.
73,878	HNTB Corporation, HNTB Holding, LTD., Accounting Department.	Kansas City, MO	April 1, 2009.
73,917	Stanadyne Corporation, Pencil Nozzel Injector Division, Leased Workers from Pro-Type.	Jacksonville, NC	April 13, 2009.
74,012	GM Powertrain Defiance CET, General Motors	Defiance, OH	April 14, 2009.
74,058	Pentel of America, Ltd., Manufacturing Division	Torrance, CA	May 6, 2009.
74,112	Edwards Vacuum, Inc., Leased Workers from Manpower and Kforce.	Tewksbury, MA	May 17, 2009.
74,140	Sweater Project Corp	North Bergen, NJ	May 11, 2009.
74,223	White's Metal Works, Inc	Bassett, VA	June 10, 2009.
74,293	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	Long Beach, CA	June 7, 2009.
74,293A	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	Anaheim, CA	June 7, 2009.
74,293B	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	El Segundo, CA	June 7, 2009.

TA–W No.	Subject firm	Location	Impact date
74,293C	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	Huntington Beach, CA	June 7, 2009.
74,293D	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	Irvine, CA	June 7, 2009.
74,293E	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	Lemoore, CA	June 7, 2009.
74,293F	The Boeing Company, Engineering Operations & Technology Div. & Information Technology Div.	Seal Beach, CA	June 7, 2009.
74,348	The TriZetto Group, Inc., Leased Workers from Syntel Limited, Inforonics, LLC, etc.	Greenwood Village, CO	July 1, 2009.
74,354	HSBC Card Services, Inc., HSBC North American Holdings, Security and Fraud Dept., etc.	Tulsa, OK	June 18, 2009.
74,381	Quiksilver Americas, Quiksliver Screenprint Operations, Leased Workers from Rainmaker Staffing.	Huntington Beach, CA	May 8, 2010.
74,391	Travelers Indemnity Company, Claims Services, Workers' Compensation Subrogation.	Wyomissing, PA	July 13, 2009.
74,394	Laserwords U.S., Inc., Laserwords Private LTD, Leased Workers from Kelly Services.	Lewiston, ME	June 11, 2009.
74,433	Prudential Insurance Company of America, Prudential Retirement.	Hartford, CT	July 26, 2009.
74,441	Hagemeyer North America, El Paso Branch	El Paso, TX	July 19, 2009.
74,442	Hagemeyer North America, Mcallen Branch	McAllen, TX	July 19, 2009.
74,443	StarTek USA, Inc., Resource Planning Department, Off-Site Teleworker Bryan Martin.	Denver, CO	July 19, 2009.
74,443A	StarTek USA, Inc., Resource Planning Department	Collinsville, VA	July 19, 2009.
74,443B	StarTek USA, Inc., Resource Planning Department	Decatur, IL	July 19, 2009.
74,443C	StarTek USA, Inc., Resource Planning Department	Jonesboro, AR	July 19, 2009.
74,443D	StarTek USA, Inc., Resource Planning Department	Mansfield, OH	July 19, 2009.
74,443E	StarTek USA, Inc., Resource Planning Department	Lynchburg, VA	July 19, 2009.
74,443F	StarTek USA, Inc., Resource Planning Department	Enid, OK	July 19, 2009.
74,443G	StarTek USA, Inc., Resource Planning Department	Grand Junction, CO	July 19, 2009.
74,457	Leach International, Esterline Technologies, Leased Workers from Ultimate Staffing Service, etc.	Buena Park, CA	July 22, 2009.
74,461	Providence Chain Company, Leased Workers from Microtech Staffing Group and Occupations Unlimited.	Providence, RI	July 30, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,886	Turner Techtronics, Inc	Burbank, CA	November 17, 2008.
73,165	James Hamilton Construction Company, Tyrone Mine.	Silver City, NM	December 23, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,431	Milliken & Company, Apparel Division	Barnwell, SC	January 19, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
72,283	International Business Machines (IBM), Global Technology Services Delivery Division, Massachusetts Teleworkers.	Endicott, NY.	

TA–W No.	Subject firm	Location	Impact date
72,283A	International Business Machines (IBM), Domino Server Application Development Team, etc., Massachusetts Teleworkers.	Endicott, NY.	
74,256	Ferragon Corporation, Ferrous Metal Processing Company.	Brooklyn, OH	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
72,842	Nabors Well Services, Ltd., Nabors Industries, Ltd	San Angelo, TX.	
72,971	ASC Machine Tools, Inc	Spokane Valley, WA.	
73,101	Tyler Pipe Company, Soil/Plumbing Division, North Plant.	Tyler, TX.	
73,110	Robin Industries, Inc., Cleveland Manufacturing	Cleveland, OH.	
73,374	Marshalltown Company	Marshalltown, IA.	
73,413	Unit Structures, LLC	Magnolia, AR.	
73,717	Aperto Networks, Inc., Operations Department	Milpitas, CA.	
73,723	FirstSolutions, Claims Processing Center	Two Harbors, MN.	
73,863	SuperMedia, LLC, FKA Idearc Media, LLC, Supermedia Information Services, LLC	Bensalem, PA.	
73,950	Auto Builders, Inc	Ladson, SC.	
74,021	Diagnostic Staffing Services, LLC	Pittsburgh, PA.	
74,281	Humana Insurance Company, Carenetwork, Inc	Green Bay, WI.	
74,321	Beloit Health Systems/Beloit Clinic, The Health Information Management Transcription Department.	Beloit, WI.	
74,362	Harley-Davidson Motor Company Operations, Inc	York, PA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
72,463	Draexlmaier Automotive of America, LLC	Duncan, SC.	
72,771	HMC Technologies	New Albany, MS.	
73,827	Architectural Glazing Technologies, On-site Leased Workers Bonney Staffing.	Sanford, ME.	
74,273	Doyle and Roth Manufacturing Company, Inc	Simpson, PA.	
74,383	Blen-Col, Inc., DBA L&A Molding (Hudson Color Concentrates).	Leominster, MA.	
74,451	StarTek USA, Inc., Off-Site Worker	Denver, CO.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
73,589	DuPont Performance Coatings, E.I. Dupont De Nemours Company OEM.	Fenton, MO.	
74,092	Cytec Engineered Materials, Inc., Corporate Service Employees.	Winona, MN.	
74,093	Cytec Engineered Materials, Inc., Corporate Service Division.	Greenville, TX.	
74,094	Cytec Carbon Fibers, LLC, Corporate Service Division.	Piedmont, SC.	
74,095	Cytec Engineered Materials, Inc., Corporate Service Division.	Anaheim, CA.	
74,096	Cytec Engineered Materials, Inc., Corporate Service Division.	Havre de Grace, MD.	
74,097	Cytec Surface Specialties, Inc., Corporate Service Division.	Smyrna, GA.	

TA–W No.	Subject firm	Location	Impact date
74,098	Building Block Chemicals, Corporate Service Division.	Westwego, LA.	
74,099	Cytec Industries, Inc., Corporate Service Division	Mount Pleasant, TN.	
74,100	Cytec Industries, Inc., Corporate Service Division	Stamford, CT.	
74,101	Cytec Surface Specialties, Inc., Corporate Service Division.	North Augusta, SC.	
74,102	Cytec Engineered Materials, Inc., Corporate Service Division.	Tempe, AZ.	
74,216	Prudential Insurance Company of America, Prudential Retirement.	Moosic, PA.	
74,444	StarTek USA, Inc., Resource Planning Department	Collinsville, VA.	
74,445	StarTek USA, Inc., Resource Planning Department	Decatur, IL.	
74,446	StarTek USA, Inc., Resource Planning Department	Jonesboro, AR.	
74,447	StarTek USA, Inc., Resource Planning Department	Mansfield, OH.	
74,448	StarTek USA, Inc., Resource Planning Department	Lynchburg, VA.	
74,449	StarTek USA, Inc	Enid, OK.	
74,450	StarTek USA, Inc	Grand Junction, CO.	

The following determinations terminating investigations were issued because the Department issued a negative determination on petitions related to the relevant investigation period applicable to the same worker group. The duplicative petitions did not present new information or a change in circumstances that would result in a reversal of the Department's previous negative determination, and therefore, further investigation would duplicate efforts and serve no purpose.

TA–W No.	Subject firm	Location	Impact date
73,844	J.C. Penney Company, Inc.	Waterford, MI	

I hereby certify that the aforementioned determinations were issued during the period of August 9, 2010 through August 13, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: August 19, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–21394 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 9, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 9, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 19th day of August 2010.

Michael Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 8/9/10 AND 8/13/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74496	Hallmark Cards, Inc. (State/One-Stop)	Kansas City, MO	08/09/10	08/02/10
74497	Deluxe Digital Studios, Inc. (Workers)	Moosic, PA	08/09/10	06/28/10
74498	Detroit Terminal (State/One-Stop)	Detroit, MI	08/11/10	07/08/10

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 8/9/10 AND 8/13/10—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74499	Elmira Terminal (State/One-Stop)	Elmira, MI	08/11/10	07/08/10
74500	Grandville Terminal (State/One-Stop)	Grandville, MI	08/11/10	07/08/10
74501	Cincinnati River Terminal (Company)	Cincinnati, OH	08/11/10	07/08/10
74502	Chicago Summit Terminal (State/One-Stop)	Summit, IL	08/11/10	07/08/10
74503	Road 9, Incorporated (State/One-Stop)	Greenwood Village, CO	08/11/10	08/10/10
74504	American Girl Brands, LLC (Company)	Middleton, WI	08/11/10	08/06/10
74505	Neff Motivation, Inc. (Company)	Unadilla, GA	08/11/10	08/09/10
74506	Acxiom CDC (State/One-Stop)	Chicago, IL	08/11/10	07/29/10
74507	Hanesbrands, Inc. (Company)	Winston-Salem, NC	08/11/10	07/10/10
74508	Hanesbrands, Inc. (Company)	Winston-Salem, NC	08/11/10	07/10/10
74509	NYK Business Systems Americas, Incorporated (Company).	Seattle, WA	08/12/10	08/06/10
74510	Ornamental Products, LLC (Company)	High Point, NC	08/12/10	08/09/10
74511	Masco Retail Cabinet Group, LLC (Company)	Waverly, OH	08/12/10	08/06/10
74512	Masco Retail Cabinet Group, LLC (Company)	Seal Township, OH	08/12/10	08/06/10
74513	Masco Retail Cabinet Group, LLC (Company)	Seaman, OH	08/12/10	08/06/10
74514	Asten Johnson (Workers)	Clinton, SC	08/13/10	08/03/10
74515	Weyerhaeuser (Union)	Sweet Home, OR	08/13/10	08/11/10
74516	CCI (Company)	Rancho Santa Margarita, CA	08/13/10	08/11/10
74517	Expedia.com (Workers)	Dallas, TX	08/13/10	07/31/10
74518	Peco II by Lineage Power (Company)	Galion, OH	08/13/10	07/27/10
74519	Freeport McMoran Copper and Gold (Workers)	Phoenix, AZ	08/13/10	07/17/10
74520	Automation Engineering (State/One-Stop)	Fort Smith, AR	08/13/10	08/11/10
74521	Johnson Material Handling (State/One-Stop)	Hackett, AR	08/13/10	08/11/10
74522	HealthPlan Services (Company)	Tampa, FL	08/13/10	08/06/10

[FR Doc. 2010–21393 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0012]

National Advisory Committee on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH) and NACOSH subgroup meetings.

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) will meet September 14 and 15, 2010, in Washington, DC. In conjunction with the NACOSH meeting, its Gulf Oil Spill Subgroup will meet.

DATES: *NACOSH meeting:* NACOSH will meet from 8:30 a.m. to 4:30 p.m., on Tuesday, September 14, and Wednesday, September 15, 2010.

Submission of comments, requests to speak, and requests for special accommodation: Comments, requests to speak at the NACOSH meeting, and requests for special accommodations for the NACOSH meeting must be submitted (postmarked, sent, transmitted) by September 7, 2010.

ADDRESSES: *NACOSH meeting:* NACOSH will meet in Room N–N3437 A/B/C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: You may submit comments and requests to speak at the NACOSH meeting, identified by docket number for this Federal Register notice (Docket No. OSHA–2010–0012), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, messenger or courier service: Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (TTY (887) 889–5627). Deliveries (hand, express mail, messenger, courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m. e.t.

Requests for special accommodation: Submit requests for special accommodations for the NACOSH meeting by hard copy, telephone, or e-mail to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this Federal Register notice (Docket No. OSHA–2010–0012). Because of security-related procedures, submission by regular mail may result in significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, messenger or courier service. For additional information about submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments and requests to speak, including personal information, are placed in the public docket without change and may be available online. Therefore, OSHA cautions against submitting personal information such as social security numbers and birthdates.

Docket: To read or download documents in the public docket for this NACOSH meeting, go to *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection

and copying at the OSHA Docket Office at the address above.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* MaryAnn Garrahan, OSHA, Office of Communications, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information: Ms. Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington DC 20210; telephone: (202) 693–1932; e-mail *crawford.deborah@dol.gov.*

SUPPLEMENTARY INFORMATION: NACOSH will meet Tuesday, September 14 and Wednesday, September 15, 2010, in Washington, DC. NACOSH meetings are open to the public.

NACOSH is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App.), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 102–3).

The tentative agenda of the NACOSH meeting will include updates and discussions on the following topics:

- Remarks from the Assistant Secretary of Labor for Occupational Safety and Health (OSHA);
- Remarks from the Director of the National Institute for Occupational Safety and Health;
- OSHA Initiatives: Regulatory, Enforcement and Compliance Assistance;
- Update on the Gulf Oil Spill activities;
- Enhancing workers' voice in the workplace; and
- Ethics Update.

In addition, the Gulf Oil Spill subgroup was formed at the June 8, 2010, NACOSH meeting. The subgroup will meet from 3 p.m. until 4:30 p.m. on September 14, 2010, in Room N3437A/B/C and report back to the full committee on September 15.

NACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts and minutes are included in the public record of this NACOSH meeting (Docket No. OSHA 2010–0012).

Public Participation

Interested parties may submit a request to make an oral presentation to NACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (*e.g.,* organization name), if any and a brief outline of the presentation. Requests to address NACOSH may be granted as time permits and at the discretion of the NACOSH chair.

Interested parties also may submit comments, including data and other information using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to NACOSH members prior to the meeting.

Individuals who need special accommodations to attend the NACOSH meeting should contact Ms. Chatmon using the contact information listed in the **ADDRESSES** section.

Submissions and Access to Meeting Record

You may submit comments and requests to speak (1) Electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the docket number for this notice (Docket No. OSHA–2010–0012). You also may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit three copies to the OSHA Docket Office using the instructions in the **ADDRESSES** section above. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office.

Meeting transcripts and minutes as well as comments and requests to speak at the NACOSH meeting are included in the public record of the NACOSH meeting (Docket No. OSHA–2010–0012). Comments and requests to speak are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted materials) are not publicly available to read or download through that webpage. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

For information on using *http://www.regulations.gov* to make submissions and to access the docket, click on the "Help" tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that webpage and for assistance in using the Internet to locate submissions and other documents in the docket. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available on the OSHA webpage at *http://www.osha.gov.*

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (U.S.C. 656), 29 CFR 1912a, and Secretary of Labor's Order No. 5–2007 (71 FR 31160).

Signed at Washington, DC, on August 26, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–21680 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,057]

Specialty Minerals, Inc., Franklin, VA; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated July 9, 2010 and July 16, 2010 (filed by a company official and a worker, respectively), administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm was requested. The determination was issued on June 18, 2010. The Department's Notice of determination was published in the **Federal Register** on July 1, 2010 (75 FR 38142). The workers produced precipitated calcium carbonate used in the production of paper.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the TAA petition filed on behalf of workers at Specialty Chemicals, Inc., Franklin, Virginia, was based on the finding that there was no shift/acquisition of production of precipitated calcium carbonate from the subject firm to a foreign country; nor was there any increase in imports of articles like or directly competitive with precipitated calcium carbonate produced at the subject facility; nor was the component part produced by the subject firm (precipitated calcium carbonate) directly incorporated into a firm's production of an article that was the basis of a primary TAA certification.

The company official's request for reconsideration stated that the workers of the subject firm should be eligible for TAA because "our customer, International Paper (IP) Franklin, Virginia is certified as a Primary Producer (see TA–W–70,243). The date of the certification is still within the relevant period for the separations for which benefits are sought." The company official asserts that workers of the subject firm are eligible to apply for TAA as adversely affected secondary workers.

The initial investigation revealed that there are two International Paper Company facilities in Franklin, Virginia, that employed workers who are eligible to apply for TAA. Workers at International Paper Company (Lumber Plant) Franklin, Virginia were certified as adversely affected primary workers (TA–W–70,243) and workers at International Paper Company, Franklin Pulp and Paper Mill, Franklin, Virginia were certified as adversely affected secondary workers (TA–W–72,764).

The Department believes that the company official misidentified the petition number of International Paper Company, Franklin Pulp and Paper Mill, Franklin, Virginia because, during the initial investigation, the company official confirmed that precipitated calcium carbonate was incorporated into the paper produced by International Paper Company, Franklin Pulp and Paper Mill, Franklin, Virginia and International Paper Company confirmed that the subject firm supplied precipitated calcium carbonate to International Paper Company, Franklin Pulp and Paper Mill, Franklin, Virginia.

The worker's request for reconsideration stated that the subject firm is a "supplier/downstream producer" to "International Paper" and "closed down as a direct result of what happened at the Franklin paper mill." The Department determines that International Paper Company, Franklin Pulp and Paper Mill, Franklin, Virginia is the "Franklin paper mill."

Section 222(c) of the Trade Act of 1974, as amended, states that adversely affected secondary workers must be employed by a firm that is a supplier to a firm that employed a worker group who are adversely affected primary workers. Therefore, the supply of precipitated calcium carbonate to International Paper Company, Franklin Pulp and Paper Mill, Franklin, Virginia cannot be a basis for certification for workers of the subject firm.

The petitioners did not supply facts not previously considered nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 19th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–21392 Filed 8–27–10; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10–08]

Notice of the September 15, 2010, Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Wednesday, September 15, 2010.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Melvin F. Williams, Jr., VP/General Counsel and Corporate Secretary via e-mail at *corporatesecretary@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting to discuss approval of the Jordan Compact; approval of the Selection Criteria & Methodology Report; Compact Development and Portfolio Update; Threshold Program Review Update; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: August 26, 2010.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

[FR Doc. 2010–21748 Filed 8–26–10; 4:15 pm]

BILLING CODE 9211–03–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10–07]

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2011 and Countries That Would Be Candidates But For Legal Prohibitions

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: Section 608(d) of the Millennium Challenge Act of 2003 requires the Millennium Challenge Corporation to publish a report that identifies countries that are "candidate countries" for Millennium Challenge Account assistance during FY 2011. The report is set forth in full below.

Dated: August 25, 2010.

Melvin F. Williams, Jr.,

Vice President/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2011 and Countries That Would Be Candidates but for Legal Prohibitions

Summary

This report to Congress is provided in accordance with section 608(a) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7701, 7707(a) (the "Act").

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance for countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries to achieve lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps in selecting countries with which MCC will seek to enter into a compact, including (a) determining the countries that will be eligible for MCA assistance for fiscal year 2011 (FY11) based on a country's demonstrated commitment to (i) just and democratic governance, (ii) economic freedom, and (iii) investments in its people; and (b) considering the opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

(1) The countries that are "candidate countries" for MCA assistance for FY11 based on per capita income levels and eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act);

(2) The criteria and methodology that the MCC Board of Directors (Board) will use to measure and evaluate the policy performance of the "candidate countries" consistent with the requirements of subsections (a) and (b) of section 607 of the Act in order to determine "MCA eligible countries" from among the "candidate countries" (section 608(b) of the Act); and

(3) The list of countries determined by the Board to be "MCA eligible countries" for FY11, identification of such countries with which the Board will seek to enter into compacts, and a justification for such eligibility determination and selection for compact negotiation (section 608(d) of the Act).

This report is the first of three required reports listed above.

Candidate Countries for FY11

The Act requires the identification of all countries that are candidates for MCA assistance for FY11 and the identification of all countries that would be candidate countries but for specified legal prohibitions on assistance. Sections 606(a) and (b) of the Act provide that for FY11 a country shall be a candidate for MCA assistance if it:

- Meets one of the following two income tests:
  - Has a per capita income equal to or less than the historical ceiling of the International Development Association eligibility for the fiscal year involved (or $1,905 gross national income (GNI) per capita for FY11) (the "low income category"); or
  - Is classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and has an income greater than the historical ceiling for International Development Association eligibility for the fiscal year involved (or $1,906 to $3,945 GNI per capita for FY11) (the "lower middle income category"); and
- Is not ineligible to receive U.S. economic assistance under part I of the Foreign Assistance Act of 1961, as amended, (the "Foreign Assistance Act"), by reason of the application of the Foreign Assistance Act or any other provision of law.

Pursuant to section 606(c) of the Act, the Board has identified the following countries as candidate countries under the Act for FY11. In so doing, the Board has anticipated that prohibitions against assistance as applied to countries in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117) (the "FY10 SFOAA"), will again apply for FY11, even though the Department of State, Foreign Operations, and Related Programs Appropriations Act for FY11 has not yet been enacted and certain findings under other statutes have not yet been made. As noted below, MCC will provide any required updates on subsequent changes in applicable legislation or other circumstances that affect the status of any country as a candidate country for FY11.

Candidate Countries: Low Income Category

1. Afghanistan
2. Bangladesh
3. Benin
4. Bolivia
5. Burkina Faso
6. Burundi
7. Cambodia
8. Cameroon
9. Central African Republic
10. Chad
11. Comoros
12. Congo, Republic of the
13. Dem. Republic of the Congo
14. Djibouti
15. Ethiopia
16. Gambia, The
17. Ghana
18. Guinea
19. Guinea Bissau
20. Guyana
21. Haiti
22. Honduras
23. India
24. Kenya
25. Kiribati
26. Kyrgyz Republic
27. Lao PDR
28. Lesotho
29. Liberia
30. Malawi
31. Mali
32. Mauritania
33. Moldova
34. Mongolia
35. Mozambique
36. Nepal
37. Nicaragua
38. Niger
39. Nigeria
40. Pakistan
41. Papua New Guinea
42. Philippines
43. Rwanda
44. Sao Tome and Principe
45. Senegal
46. Sierra Leone
47. Solomon Islands
48. Somalia
49. Tajikistan
50. Tanzania
51. Togo
52. Uganda
53. Vietnam
54. Yemen
55. Zambia

Candidate Countries: Lower Middle Income Category

1. Angola
2. Armenia
3. Belize
4. Bhutan
5. Cape Verde
6. Ecuador
7. Egypt, Arab Republic
8. El Salvador

9. Georgia
10. Guatemala
11. Indonesia
12. Jordan
13. Kosovo
14. Maldives
15. Marshall Islands
16. Micronesia, Fed. Sts.
17. Morocco
18. Paraguay
19. Samoa
20. Sri Lanka
21. Swaziland
22. Thailand
23. Timor-Leste
24. Tonga
25. Tunisia
26. Turkmenistan
27. Tuvalu
28. Ukraine
29. Vanuatu

Countries That Would Be Candidate Countries but for Legal Prohibitions That Prohibit Assistance

Countries that would be considered candidate countries for FY11, but are ineligible to receive United States economic assistance under part I of the Foreign Assistance Act by reason of the application of any provision of the Foreign Assistance Act or any other provision of law, are listed below. As noted above, this list is based on legal prohibitions against economic assistance that apply for fiscal year 2010 and that are anticipated to apply again for FY11.

Prohibited Countries: Low Income Category

1. Burma is subject to numerous restrictions, including section 570 of the fiscal year 1997 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–208), which prohibits assistance to the government of Burma until it makes progress on improving human rights and implementing democratic government, and due to its status as a major drug-transit or major illicit drug producing country for 2009 (Presidential Determination No. 2009–30 (9/15/2009)).

2. Cote d'Ivoire is subject to section 7008 of the FY10 SFOAA and similar provisions of prior-year appropriations acts, which prohibit assistance to the government of a country whose duly elected head of government is deposed by military coup or decree. Cote d'Ivoire is also subject to section 7086(c) of the FY10 SFOAA, which restricts economic and security assistance under the SFOAA for the central government of a country that fails to make its annual national budget publicly available.

3. Eritrea is subject to restrictions due to its status as a Tier III country under the Trafficking Victims Protection Act, as amended, 22 U.S.C. sections 7101 *et seq.*

4. Madagascar is subject to section 7008 of the FY10 SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree and also section 7086(c) of the FY10 SFOAA regarding budget transparency.

5. North Korea is subject to numerous restrictions, including section 7007 of the FY10 SFOAA, which prohibits any direct assistance to the government.

6. Sudan is subject to numerous restrictions, including section 620A of the Foreign Assistance Act, which prohibits assistance to governments supporting international terrorism; section 7012 of the FY10 SFOAA and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default on payment to the U.S. in certain circumstances; section 7008 of the FY10 SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree; and section 7070(f) of the FY10 SFOAA.

7. Uzbekistan's central government is subject to section 7076(a) of the fiscal year 2009 SFOAA, which is largely incorporated by reference and carried forward by section 7075 of the FY10 SFOAA. This restriction states that funds (other than expanded international military education and training funds) may be made available for assistance to the central government of Uzbekistan only if the Secretary of State determines and reports to the Congress that the government is making substantial and continuing progress in meeting its commitments under a framework agreement with the United States.

8. Zimbabwe is subject to several restrictions, including section 7070(i)(2) of the FY10 SFOAA, which prohibits assistance (except for macroeconomic growth assistance) to the central government of Zimbabwe unless the Secretary of State determines and reports to Congress that the rule of law has been restored in Zimbabwe.

Prohibited Countries: Lower Middle Income Category

1. China is not eligible to receive economic assistance from the United States, absent special authority, because of concerns relating to China's record on human rights.

2. Iraq is subject to section 620(t) of the Foreign Assistance Act, which prohibits assistance to any country which has severed diplomatic relations with the United States until such diplomatic relations are restored and an agreement to furnish such assistance has been negotiated and entered into after the resumption of diplomatic relations.

3. Syria is subject to numerous restrictions, including 620A of the Foreign Assistance Act, which prohibits assistance to governments supporting international terrorism; section 7007 of the FY10 SFOAA, which prohibits direct assistance; and section 7012 of the FY10 SFOAA and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

The countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions, determinations, or changed country circumstances that affect their legal eligibility for assistance under part I of the Foreign Assistance Act by reason of application of the Foreign Assistance Act or any other provision of law for FY11. MCC will include any required updates on such statutory eligibility that affect countries' identification as candidate countries for FY11, at such time as it publishes the notices required by sections 608(b) and 608(d) of the Act, or at other appropriate times. Any such updates with regard to the eligibility or ineligibility of particular countries identified in this report will not affect the date on which the Board is authorized to determine eligible countries from among candidate countries which, in accordance with section 608(a) of the Act, shall be no sooner than 90 days from the date of publication of this report.

[FR Doc. 2010–21518 Filed 8–25–10; 4:15 pm]

BILLING CODE 9211–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to reinstate use of a voluntary survey of visitors to the Public Vaults, which is part of the National Archives Experience in Washington, DC. The information will be used to determine how the various

components of the Public Vaults affect visitors' level of satisfaction with the Public Vaults and how effectively the venue communicates that records matter. The information will support adjustments in this offering that will improve the overall visitor experience. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives Public Vaults Survey.

OMB number: 3095–0062 (reinstatement of previously approved information collection).

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the Public Vaults in Washington, DC.

Estimated number of respondents: 1,050.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when an individual visits the Public Vaults in Washington, DC).

Estimated total annual burden hours: 175 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this voluntary data collection is to measure customer satisfaction with the Public Vaults and identify additional opportunities for improving the customers' experience.

Dated: August 20, 2010.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2010–21671 Filed 8–27–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 29, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *request.schedule@nara.gov.* FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–09–10, 1 item, 1 temporary item). Master files of an electronic information system used to track organizations and individuals with access to biological agents and toxins.

2. Department of Agriculture, Food and Nutrition Service (N1–462–09–2, 1 item, 1 temporary item). Master files of an electronic information system containing data that supports financial management and accounting operations.

3. Department of Health and Human Services, Agency for Healthcare Research and Quality (N1–510–09–11, 3 items, 3 temporary items). Master files of an electronic information system containing research topic nomination data, user comments, report drafts, and training materials relating to health care effectiveness.

4. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–09–11, 1 item, 1 temporary item). Master files of electronic information systems containing information used to support quality reviews of Medicare payments for goods and services.

5. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–1, 2 items, 2 temporary items). Master files of an electronic information system containing copies of scanned images of law enforcement investigation records and other administrative and program records.

6. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–4, 4 items, 4 temporary items). Master files, inputs, and outputs of an electronic information system containing biographical, biometric, and other data relating to investigations and law enforcement encounters.

7. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–5, 6 items, 6 temporary items). Master files and outputs of an electronic information system containing information compiled on visa applicants during visa security reviews and recommendations to the State Department regarding issuance of the visas.

8. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–6, 7 items, 7 temporary items). Master files and outputs of an electronic information system containing information used to locate fugitive aliens, as well as information on activities taken to accomplish an arrest and information on aliens (both fugitive and non-fugitive) arrested.

9. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–7, 2 items, 2 temporary items). Master files of an electronic information system containing information on gangs, gang activities, and suspected or confirmed gang members and their associates.

10. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–10, 2 items, 2 temporary items). Master files of an electronic information system containing biographical information and scanned fingerprint images used for applicant and employee criminal history checks.

11. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–11, 2 items, 2 temporary items). Master files and outputs of an electronic information system that contains information about immigration bonds posted for aliens involved in removal proceedings.

12. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–10–2, 4 items, 4 temporary items). Master files of an electronic information system used to track case files involving internal agency investigations.

13. Department of Housing and Urban Development, Agency-wide (N1 207–09–7, 1 item, 1 temporary item). Master files of an electronic information system containing reference copies of policy issuances posted on the agency Web site.

14. Department of the Interior, Office of Surface Mining and Reclamation Enforcement (N1 471–10–4, 1 item, 1 temporary item). Master files of an electronic information system used by coal companies to enter coal production data from which they can prepare required filings for multiple agencies.

15. Department of the Navy (N1–NU–10–2, 6 items, 2 temporary items). Hard copy aperture cards that have been converted to a digital format. The aperture cards contain engineering drawings of mechanical and electrical systems, ships, ordnance, and aircraft. Proposed for permanent retention are the digital versions of the aperture cards, as well as hard copy aperture cards not converted to a digital format.

16. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–09–2, 1 item, 1 temporary item). Worksheets used to compare veterans' reported income with income records of the Internal Revenue Service and Social Security Administration.

17. Export-Import Bank of the United States, Agency-wide (N1–275–10–2, 1 item, 1 temporary item). Master files of an electronic information system used to track financial instruments with renegotiated terms and/or payment schedules.

18. Export-Import Bank of the United States, Agency-wide (N1–275–10–4, 1 item, 1 temporary item). Master files of an electronic information system used to monitor and evaluate risks of financial products.

19. Federal Maritime Commission, Office of the Secretary (N1–358–09–7, 11 items, 9 temporary items). Reading files, routine fact finding investigation files, official docket files for non-significant cases, interoffice confidential files, environmental assessments with findings of no significant impact, environmental/energy impact statements, certification files, and subject files. Proposed for permanent retention are official docket files for significant cases and Chairmen's and Commissioners' speech and biography files.

20. Federal Mine Safety and Health Review Commission, Docket Office (N1–470–09–2, 5 items, 4 temporary items). Audio recordings of Commission meetings, case files relating to citations and orders issued to mine operators, and master files of an electronic information system used to track cases.

Proposed for permanent retention are Commission Blue Books containing administrative law decisions and orders that merit publication.

21. Federal Mine Safety and Health Review Commission, Office of Administrative Law Judges (N1–470–09–3, 7 items, 7 temporary items). Cases pending files, subject files, chronological files, and administrative meeting files.

22. Federal Mine Safety and Health Review Commission, Office of General Counsel (N1–470–09–4, 13 items, 10 temporary items). Cases pending files, tally sheets, chronological files, petitions for review, rulemaking files, subject files, and FOIA reading room materials. Proposed for permanent retention are decisional memoranda, pre-decisional opinions, and speeches.

23. Federal Mine Safety and Health Review Commission, Office of Chairman, Commissioners, and Counsels (N1–470–09–5, 16 items, 15 temporary items). Pending case files, closed case files, petitions for reviews, copies of decisions, default orders, cases pending before the U.S. Court of Appeals, case tracking files, rulemaking files, legislative reference files, chronological files, subject files, management and meeting files, and EEO records. Speeches by the Chairman and Commissioners are proposed for permanent retention.

24. National Archives and Records Administration, Office of Records Services (DAA–0064–2010–0006, 1 item, 1 temporary item). Correspondence, applications, attendance records, billing documents, and other records relating to records management workshops, conferences, and training courses.

25. National Credit Union Administration, Agency-wide (N1–413–09–1, 16 items, 13 temporary items). Records relating to individual credit unions, including reports of examination, routine correspondence, and customer complaints. Also included are Community Development Revolving Loan Program files and credit union liquidation files. Proposed for permanent retention are credit union regulatory, charter, and insurance files.

Dated: August 24, 2010.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–21672 Filed 8–27–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: State Library Administrative Agencies Survey, FY 2011–2013

AGENCY: Institute of Museum and Library Services, The National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the *Contact* section below on or before September 25, 2010.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Kim A. Miller, Management Analyst, Office of Policy, Planning, Research, and Communication, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. *Telephone:* 202–653–4762; *Fax:* 202–653–4600; *e-mail: kmiller@imls.gov;* or by teletype (TTY/TDD) for persons with hearing difficulty at 202/653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for, and trends of, museum and library services funded by IMLS; reporting on the impact and effectiveness of programs conducted with funds made available by IMLS in addressing such needs; and identifying, and disseminating information on, the best practices of such programs. (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

Abstract: The State Library Administrative Agencies Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0072, which expires 9/30/2010. State library administrative agencies ("StLAs") are the official agencies of each State charged by State law with the extension and development of public library services throughout the State. (20 U.S.C. Chapter 72, 20 U.S.C. 9122.) The purpose of this survey is to provide State and Federal policymakers with information about StLAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, and direct services to the public.

Current Actions: This notice proposes clearance of the State Library Agencies Survey. The 60-day notice for the State Library Administrative Agencies Survey, FY 2011–2013, was published in the **Federal Register** on May 11, 2010, (FR vol. 75, No. 90, pgs. 26282–26283). No comments were received.

Agency: Institute of Museum and Library Services.

Title: State Library Administrative Agencies Survey, FY 2011–2013.

OMB Number: 3137–0072.

Agency Number: 3137.

Affected Public: Federal, State and Local Governments, State Library Administrative Agencies, Libraries, general public.

Number of Respondents: 51.

Frequency: Annually.

Burden hours per respondent: 26.

Total burden hours: 1326.

Total Annual Costs: $34,874.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: August 24, 2010.

Kim A. Miller,

Management Analyst, Office of Policy, Planning, Research, and Communication.

[FR Doc. 2010–21487 Filed 8–27–10; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Science & Engineering; 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 International Science and Engineering (#25104).

Date/Time: September 20, 2010; 9 a.m. to 5:15 p.m.; September 21, 2009; 8:30 a.m. to 12 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford II, Room 595, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Robert E. Webber, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–7569.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education and related activities involving U.S. science and engineering working within a global context, as well as strategic efforts to promote a more effective NSF role in international science and engineering.

Agenda

September 20, 2010

Update of 2010 activities.
Working Groups discussions.
Invited presentations.

September 21, 2009

Discussion with NSF International Coordinating Committee.
Conversation with NSF Acting Director.
Planning for the next meeting.

Dated: August 24, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–21437 Filed 8–27–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7015–ML; ASLBP No. 10–899–02–ML–BD01]

Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility); Notice of Atomic Safety and Licensing Board Reconstitution

Pursuant to 10 CFR 2.313(c) and 2.321(b), the Atomic Safety and Licensing Board (Board) in the above-captioned *Areva Enrichment Services* proceeding is hereby reconstituted by appointing Administrative Judge G. Paul Bollwerk, III, to serve as Board Chair in place of Administrative Judge Alex S. Karlin, whose other assignments have rendered him unavailable to participate in this proceeding.

All correspondence, documents, and other materials shall continue to be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302 *et seq.*

Issued at Rockville, Maryland, this 24th day of August 2010.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2010–21515 Filed 8–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0287]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Draft Regulatory Guide, DG–8035, "Administrative Practices in Radiation Surveys and Monitoring."

FOR FURTHER INFORMATION CONTACT: Harriet Karagiannis, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7477 or e-mail *Harriet.Karagiannis@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG) is temporarily identified by its task number, DG–8035, which should be mentioned in all related correspondence. DG–8035 is proposed Revision 1 of Regulatory Guide 8.2, dated August 1973. This guide provides general guidance that the staff of the NRC considers acceptable for the administrative practices associated with surveys and monitoring of ionizing radiation in licensed institutions, intended primarily for administrative and management personnel in organizations that are involved in, or are planning to initiate, activities involving the handling of radioactive materials or radiation.

The administrative requirements for radiation monitoring are mainly specified in Title 10 of the Code of Federal Regulations, part 20, "Standards for Protection against Radiation" (10 CFR part 20), and are applicable to all NRC-licensed activities. This part requires surveys in order to evaluate the significance of radiation levels that may be present. In addition, it requires radiation monitoring in order to obtain measurements for the evaluation of potential exposures and doses.

II. Further Information

The NRC staff is soliciting comments on DG–8035. Comments may be accompanied by relevant information or supporting data and should mention DG–8035 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Comments would be most helpful if received by October 29, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0287 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove

any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0287. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RAD), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RAD at (301) 492–3446.

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

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–8035 is available electronically under ADAMS Accession Number ML100680456. In addition, electronic copies of DG–8035 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* The regulatory analysis may be found in ADAMS under Accession No. ML102310331.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0287.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 19th day of August 2010.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–21522 Filed 8–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0061; Docket No. 50–298]

Nebraska Public Power District; Cooper Nuclear Station; Exemption

1.0 Background

Nebraska Public Power District (NPPD or the licensee) is the holder of Facility Operating License No. DPR–46 which authorizes operation of the Cooper Nuclear Station (CNS). The license provides, among other things, that the facility is subject to the rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Nemaha County, Nebraska.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the **Federal Register** on March 27, 2009 (74 FR 13926–13993), effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. By letter dated February 26, 2010, the NRC granted NPPD an exemption from the March 31, 2010, implementation date until August 31, 2010, for three of these additional requirements. NPPD now seeks an exemption from the August 31, 2010, implementation date until December 31, 2010, for the same three additional requirements. All other physical security requirements established by this recent rulemaking have already been implemented by the licensee.

By application dated July 7, 2010, as supplemented by letter dated July 20, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter contains security-related information and, accordingly, those portions are not available to the public. The licensee has requested an exemption from the August 31, 2010, implementation date, stating that it must complete a number of modifications to the current site security configuration before all requirements can be met. Specifically, the request is for three requirements that would be met by December 31, 2010, instead of the August 31, 2010, deadline. Granting this exemption for the three items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest. By letter dated February 26, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100190100), the NRC approved an exemption that allowed NPPD an extension from March 31, 2010, until August 31, 2010, of the implementation date for three specific requirements of the new rule.

NRC approval of this exemption, as noted above, would allow an extension

from August 31, 2010, until December 31, 2010, of the implementation date for three specific requirements of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date, as documented in the letter from R.W. Borchardt (NRC) to M.S. Fertel (Nuclear Energy Institute) dated June 4, 2009 (ADAMS Accession No. ML091410309). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the letter dated June 4, 2009.

CNS Schedule Exemption Request

The licensee provided detailed information in the Attachment to its letter dated July 7, 2010, as supplemented by letter dated July 20, 2010, requesting an exemption. The licensee is requesting additional time to implement certain new requirements due to the impact on construction activities of the extremely wet spring and flooding of the Missouri River. The licensee describes a comprehensive plan to expand the protected area with upgrades to the security capabilities of its CNS site and provides a timeline for achieving full compliance with the new regulation. The Attachment to the licensee's letter dated July 7, 2010, contains security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the August 31, 2010, deadline, justification for the exemption request, a description of the required changes to the site's security configuration, and a timeline with critical path activities that would bring the licensee into full compliance by December 31, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (*e.g.,* new buildings and fences), and (2) critical equipment will be ordered, installed, tested, and become operational. A redacted version of the licensee's exemption request dated July 7, 2010, including attachment, and the licensee's letter dated July 20, 2010, are publicly available at ADAMS Accession Nos. ML101900266 and ML102090069, respectively.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By December 31, 2010, CNS will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittal and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until December 31, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the August 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The long-term benefits that will be realized when the CNS modifications are complete justifies extending the full compliance date in the case of this particular licensee. The security measures that CNS needs additional time to complete are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the August 31, 2010, deadline for the three items specified in the Attachment to NPPD's letter dated July 7, 2010, as supplemented by letter dated July 20, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by December 31, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

The exemption extends the compliance date of three specified requirements of 10 CFR 73.55 until December 31, 2010. The Commission has determined that granting this exemption from the requirements of 10 CFR 73.55 involves (i) no significant hazards consideration, (ii) no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (iii) no significant increase in individual or cumulative public or occupational radiation exposure, (iv) no significant construction impact, and (v) no significant increase in the potential for or consequences from radiological accidents. In addition, the requirements from which this exemption is sought involve 10 CFR 51.22(c)(25)(vi)(G), "Scheduling requirements." Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(i)–(vi). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of August 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–21637 Filed 8–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee On ESBWR

The ACRS Subcommittee on Economic Simplified Boiling Water Reactor (ESBWR) will hold a meeting on September 23–24, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric—Hitachi Nuclear Energy (GEH) and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, September 23, 2010 and Friday, September 24, 2010—8:30 a.m. until 5 p.m.

The Subcommittee will discuss the safety evaluation reports for Chapter 3, "Design of Structures, Components, Equipment," Chapter 4, "Reactor," Chapter 6, "Engineered Safety Features," Chapter 7, "Instruments and Control Systems," and Chapter 9, "Auxiliary Systems." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GEH, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or E-mail *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: August 24, 2010.

Duncan White,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–21513 Filed 8–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0556]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 8.35, Revision 1, "Planned Special Exposure."

FOR FURTHER INFORMATION CONTACT: R. A. Jervey, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7404 or e-mail *RAJ@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 8.35, "Planned Special Exposure," was issued with a temporary identification as Draft Regulatory Guide, DG–8032. This regulatory guide provides guidance on the conditions and prerequisites for permitting planned special exposure(s) (PSE(s)), as allowed by Title 10 of the Code of Federal Regulations (10 CFR) Part 20, "Standards for Protection Against Radiation," the associated specific monitoring and reporting requirements, and examples of acceptable means of satisfying these requirements.

Dose limits are established in 10 CFR 20.1201, "Occupational Dose Limits for Adults." Section 10 CFR 20.1206, "Planned Special Exposures," provides the conditions and limits for PSEs of adult workers (i.e. radiation doses in addition to and accounted for separately from the doses received under the limits specified in 10 CFR 20.1201). In addition, 10 CFR 20.2104, "Notification of Prior Occupational Dose," (10 CFR 20.2104(b) and 10 CFR 20.2104(e)(2)) specify the requirements for obtaining prior occupational dose information, 10 CFR 20.2105, "Records of Planned Special Exposures," and 10 CFR 20.2106, "Records of Individual Monitoring Results," specify the requirements for exposure and monitoring records applicable to PSEs. The requirements for reporting PSEs appear in 10 CFR 20.2202, "Notification of Incidents" (10 CFR 20.2202(e)) and 10 CFR 20.2204, "Reports of Planned Special Exposures."

II. Further Information

In December 2009, DG–8032 was published with a public comment period of 60 days from the issuance of the guide. Staff's responses to public comments were received and are located in the NRC's Agencywide Documents Access and Management System (ADAMS), under Accession No. ML101370019. The public comment period closed on March 11, 2010. The regulatory analysis may be found in ADAMS under Accession No. ML101370119.

Electronic copies of Regulatory Guide 8.35, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by

fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 20th day of August, 2010.

For the Nuclear Regulatory Commission.

Mark P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–21517 Filed 8–27–10; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Privacy Act of 1974; Report of an Altered System of Records

ACTION: Notice to amend a system of records.

SUMMARY: The Peace Corps is revising two of its existing systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), PC–17—Volunteer Applicant and Service Records System, and PC–18—Former Peace Corps Volunteers Database. The first revision adds a specific routine use to both PC–17 and PC–18. This specific routine use indicates that the Peace Corps may share Peace Corps Volunteer and Returned Peace Corps Volunteer contact information with educational institutions with which the Peace Corps has a Fellows/Masters International agreement which requires access to such information. The second revision adds another specific routine use to both PC–17 and PC–18 indicating that the Peace Corps may share Peace Corps Volunteer and Returned Peace Corps Volunteer information with Returned Peace Corps Volunteer organizations that are furthering the Peace Corps' recruiting and third goal activities. The third revision indicates that all of the Peace Corps' General Routine Uses apply to PC–18. The fourth revision updates the System Manager information for PC–17.

DATES: This proposed action will be effective without further notice October 14, 2010 without further action, unless adverse comment is received by Peace Corps by September 29, 2010.

ADDRESSES: You may submit comments by e-mail to *pcfr@peacecorps.gov.* Include Privacy Act System of Records in the subject line of the message. You may also submit comments by mail to Denora Miller, Privacy Act Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Contact Denora Miller for copies of comments.

FOR FURTHER INFORMATION CONTACT: Denora Miller, Privacy Act Officer, 202–692–1236, *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act, 5 U.S.C. 552a, provides that the public will be given a 30-day period in which to comment on a revised routine use. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the revision. In accordance with 5 U.S.C. 552a, Peace Corps has provided a report on this system to OMB and the Congress. Peace Corps is publishing changes which affect the public's right or need to know.

SYSTEM NAME:

PC–17—Peace Corps, Volunteer Applicant and Service Records System.

Changes:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

After specific Routine Use (k)(4) add specific Routine Use (l) stating, "To any educational institutions with which the Peace Corps has a Fellows/USA or Masters International agreement which requires access to Volunteer or Returned Peace Corps Volunteer contact information in order to meet the terms of the agreement."

After specific Routine Use (l) add specific Routine Use (m) stating "To Returned Peace Corps Volunteer organizations furthering the Peace Corps' recruiting or third goal activities. The information released will be limited to contact information."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete current entry and replace with the following: "As the record flows from one state to another, or if a record is established for a specific purpose, the system manager is the agency official responsible for that particular function. People unsure about whom to contact, may contact the Peace Corps' FOIA/Privacy Officer at 1111 20th St., NW., Washington, DC 20526.

(1) The following system managers are located at 1111 20th St., NW., Washington, DC 20526: Director of Placement and Staging; Chief of Health Benefits and Analysis Division; Chief of Volunteer and Staff Payroll Services Branch; Director, Management Information and Assessment Division; Supervisor, Medical Records Manager in the Division of Volunteer Support;

(2) The following system managers can be contacted at the overseas post of assignment: Peace Corps Country Directors Overseas; Peace Corps Medical Officers Overseas.

SYSTEM NAME:

PC–18—Peace Corps, Former Peace Corps Volunteers Database.

Changes:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Amend the statement of general routine uses to indicate that all of the Peace Corps' General Routine Uses apply to this system; and state that the following specific routines use applies to this system:

"The contents of these records may be disclosed:

"(a) To any educational institutions with which the Peace Corps has a Fellows/USA or Masters International agreement which requires access to Volunteer or Returned Peace Corps Volunteer contact information in order to meet the terms of the agreement.

"(b) To Returned Peace Corps Volunteer organizations furthering the Peace Corps' recruiting or Third Goal activities. The information released will be limited to contact information."

This notice is issued in Washington, DC, on August 26, 2010.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2010–21493 Filed 8–27–10; 8:45 am]

BILLING CODE 6051–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Termination of Single-Employer Plans, Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval, with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB"), under the Paperwork Reduction Act, extend approval, with modifications, of a collection of information in its regulations on Termination of Single Employer Plans and Missing Participants, and implementing forms and instructions (OMB control number 1212–0036, expires September 30, 2010). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 29, 2010.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974.

Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address, visiting the Disclosure Division, faxing a request to 202–326–4042, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The Disclosure Division will e-mail, fax, or mail the request to you, as you request. The regulations and forms and instructions relating to this collection of information may be accessed on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns, Attorney, or Catherine B. Klion, Manager, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and PBGC's missing participants regulation (29 CFR part 4050). As noted above, these regulations may be accessed on PBGC's Web site at *http://www.pbgc.gov.* PBGC is making clarifying, simplifying, editorial, and other changes to the existing forms and instructions (including changes prompted by changes in ERISA and the Internal Revenue Code). The collection of information under these regulations and the implementing forms and instructions has been approved by OMB under control number 1212–0036 (expires September 30, 2010). PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that 1,381 plan administrators will be subject to the collection of information requirements in PBGC's termination and missing participants regulations and implementing forms and instructions each year, and that the total annual burden of complying with these requirements is 2,325 hours and $3,327,341. Much of the work associated with terminating a plan is performed for purposes other than meeting these requirements.

Issued in Washington, DC, this 24th day of August, 2010.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–21463 Filed 8–27–10; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Application for 10–Point Veteran Preference, 3206–0001

AGENCY: U.S. Office of Personnel Management.

ACTION: 30–Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension of an already existing information collection request (ICR) 3206–0001, Application for 10–Point Veterans' Preference. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection on behalf of the Office of Management and Budget. The information collection was previously published in the **Federal Register** on June 14, 2010, at 75 FR 33657 allowing for a 60-day public comment period. One agency provided suggested changes to the form which are outside the scope of this notice. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until September 29, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Standard Form (SF) 15, Application for 10–Point Veterans' Preference, is used by OPM examining offices and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944.

Analysis:

Agency: Employee Services, Office of Personnel Management.

Title: Application for 10–Point Veteran Preference.

OMB Number: 3206–0001.

Affected Public: Federal Employees, retirees, individuals and households.

Number of Respondents: 18,418.

Estimated Time per Respondent: 10 minutes/hour.

Total Burden Hours: 3,070 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–21541 Filed 8–27–10; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–96, CP2010–97, CP2010–98, CP2010–99, CP2010–100, and CP2010–101; Order No. 520]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently—filed Postal Service request to add six Global Expedited Package Services 3 (MC2010–28) contracts to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: August 27, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

On August 18, 2010, the Postal Service filed a notice announcing that it has entered into six additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1–2, Attachment 3. The Notice also 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 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 contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

1. Attachments 1A, 1B, 1C ,1D, 1E and 1F—redacted copies of the six contracts and applicable annexes;

2. Attachments 2A, 2B, 2C, 2D, 2E and 2F—certified statements required by 39 CFR 3015.5(c)(2) for each of the six contracts;

3. 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 of the formulas, and certification of the Governors' vote; and

4. Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for GEPS. The Postal Service identifies customer–specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement all of which are highlighted in the Notice. *Id.* at 4–5. These modifications as described in the Postal Service's Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to the baseline contract for GEPS 3 and share the same cost and market characteristics as the previously filed GEPS contracts. *Id.* at 4. It states that the differences including updates and volume or postage commitments of customers, do not alter the contracts' functional equivalency. *Id.* The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these six GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.*

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts 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 contracts be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–96 through CP2010–101 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than August 27, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov.*)

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010–96 through CP2010–101 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than August 27, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

[1] Notice of United States Postal Service of Filing Six Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application for Non–Public Treatment of Materials Filed Under Seal, August 18, 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).

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–21423 Filed 8–27–10; 8:45 am]

BILLING CODE 7710–FW–S

POSTAL REGULATORY COMMISSION

[Docket No.MC2010–36; Order No. 521]

Product List Transfer

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently–filed Postal Service request to transfer commercial Standard Mail Fulfillment Parcels from the market dominant product list to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: Comments are due September 17, 2010; reply comments are due October 15, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020 *et seq.,* on August 16, 2010, the Postal Service filed a request to transfer its commercial Standard Mail Fulfillment Parcels product from the market dominant product list to the competitive product list in the Mail Classification Schedule (MCS) on file with the Commission.[1]

The Postal Service states that, to avoid confusion, this filing is based on the assumption that classification changes proposed in Docket No. R2010–4 will be approved by the Commission prior to consideration of this request.[2] Request at 1, n.1. In that docket, the Postal Service proposes to segment Standard Mail parcels into two main categories: Marketing Parcels and Fulfillment Parcels. Current commercial and nonprofit Standard Mail Parcels would become Standard Mail Fulfillment Parcels.[3] The Postal Service does not propose to transfer nonprofit Standard Mail Fulfillment Parcels. Request at 1, n.1. The Postal Service suggests that upon their transfer to the competitive product list, the Standard Mail Fulfillment Parcels would be classified as a "Lightweight" subcategory of the Parcel Select product. *Id.* at 1. The minimum weight would be less than 16 ounces.[4]

As required by 39 CFR 3020.31 of the Commission's rules, a copy of Governors' Resolution No. 10–4 is included with the Request as Attachment A. Attachment B to the Request contains the Statement of Supporting Justification required by 39 CFR 3020.32 of the Commission's rules. Attachment C is the proposed draft MCS language and prices incorporating the language proposed in Docket No. R2010–4 as if already approved by the Commission with proposed additions and deletions for this Request.

The Postal Service summarizes the required Statement of Supporting Justification by noting that the current classification of parcels weighing less than one pound as market dominant products, and parcels weighing more than one pound as competitive products, produces a misalignment in the marketplace. Competitors make no such distinction and can offer seamless shipping options. The transfer would allow the Postal Service to offer similar comprehensive shipping solutions including contracts covering all parcels regardless of weight. *Id.* at 3.

The Postal Service's Statement of Supporting Justification offers an explanation why the transfer to the competitive product list will not result in violation of the standards in 39 U.S.C. 3633. *Id.*, Attachment B, at 1. The Postal Service notes that in FY 2009, commercial Standard Mail Fulfillment Parcels and other Standard Mail parcel categories had a collective cost coverage of 75.23 percent. It requests a 23.3 percent rate increase in Docket No. R2010–4 for Standard Mail parcel categories which, if approved, will yield a cost coverage in excess of 100 percent. Thus, it contends that commercial Standard Mail Parcels, if treated as a subcategory of Parcel Select, would satisfy 39 U.S.C. 3633(a)(1) and (2). *Id.* at 2.

The Statement of Supporting Justification seeks to demonstrate, pursuant to 39 CFR 3020.32(d), that the requested change does not propose to classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without losing a significant level of business, set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output. *Id.* at 3–7. The Statement of Justification also seeks to explain the limited extent Standard Mail Fulfillment Parcels are either covered by the postal monopoly or within the scope of the exceptions or suspensions to the Private Express Statutes, noting that normally Standard Mail Fulfillment Parcels cannot contain items required to be sent by First–Class Mail. The Postal Service indicates an intention to promulgate mailing standards in its Domestic Mail Manual limiting the inclusion of letters in any Lightweight Parcel Select parcel unless covered by an exception or suspension to the Private Express Statues pursuant to 39 CFR parts 310 or 320. *Id.* at 7–9.

Pursuant to 39 CFR 3032(f), the Postal Service states that the primary competitors to its Standard Mail Fulfillment Parcel services are the ground shipping services offered by UPS and FedEx and that each have the flexibility to price parcel products to maximize profitability. *Id.* at 9. The Postal Service states there is likely a distortionary effect on the marketplace because Standard Mail Fulfillment Parcels are priced below full cost coverage. Because of this market distortion, the "[Postal Service] has attempted to structure profitable contracts with large shippers for lightweight parcels but failed because its efforts were undercut by its own Standard Mail parcel prices." *Id.* at 10. The Postal Service claims the transfer should ameliorate any distortionary effect on the current pricing structure. *Id.* The Postal Service states that it is also losing full network First–Class Mail package volume where its competitors

[1] Request of the United States Postal Service to Transfer Commercial Standard Mail Parcels to the Competitive Product List, August 16, 2010 (Request).

[2] *See* Docket No. R2010–4, Exigent Request of the United States Postal Service, July 6, 2010.

[3] As proposed in Docket No. R2010–4, current commercial and nonprofit Standard Mail NFMs would become Standard Mail Marketing Parcels. Because of addressing standards, some current customers using commercial Standard Mail NFMs for fulfillment would be required to use commercial Standard Mail Fulfillment Parcels. Request at 2–3.

[4] *Id.,* Attachment C, Competitive Products, 2115.2, Size and Weight Limitations; *see also id.,* 2115.6 Prices, Machinable Lightweight Parcels (greater than 3.3 ounces) and Irregular Lightweight Parcels (3.3 ounces or less) and (greater than 3.3 ounces).

offer products with the last mile service through the Postal Service. *Id.*

The Postal Service states that the views of those who use the product are mainly concerned that the transfer will lead to price increases. In response, the Postal Service claims prices will need to be increased even absent a transfer to the competitive product list. It further states that one large customer supports transfer which offers the possibility of contracts for the product. The Postal Service states the transfer will allow contracts for complete shipping solutions and create mutually beneficial comprehensive solutions for shipping needs. *Id.* at 11. The Postal Service is not aware of any small business that offers products competing with commercial Standard Mail Fulfillment Parcels. *Id.* at 11–12.

II. Notice of Filings

The Commission establishes Docket No. MC2010–36 to consider the Postal Service's proposal to transfer commercial Standard Mail Fulfillment Parcels to the competitive product list.

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3633, 39 U.S.C. 3642, and 39 CFR 3020 subpart B. Comments are due no later than September 17, 2010. Reply comments, if any, are due October 15, 2010. The Postal Service's filing can be accessed via the Commission's Web site (*http://www.prc.gov*.)

The Commission appoints James Waclawski to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2010–36 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, James Waclawski is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in these proceedings are due no later than September 17, 2010.

4. Reply comments by interested persons in this proceeding are due no later than October 15, 2010.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–21438 Filed 8–27–2010; 8:45 am]

BILLING CODE 7710–FW–S

RAILROAD RETIREMENT BOARD

Privacy Act of 1974, as Amended; Notice of Computer-Matching Program (Railroad Retirement Board—Office of Personnel Management)

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of a renewal of an existing computer-matching program that expired on August 13, 2010.

SUMMARY: As required by the Privacy Act of 1974, as amended, the RRB is issuing public notice of its renewal of an ongoing computer-matching program with the Office of Personnel Management (OPM). The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from OPM by means of a computer match.

DATES: This matching program becomes effective as proposed without further notice on October 12, 2010. We will file a report of this computer-matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Grant, Chief Privacy Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone 312–751–4869 or e-mail at *tim.grant@rrb.gov.*

SUPPLEMENTARY INFORMATION:

A. General

The Computer-Matching and Privacy Protection Act of 1988, (Pub. L. 100–503), amended by the Privacy Act of 1974, (5 U.S.C. 552a) as amended, requires a Federal agency participating in a computer-matching program to publish a notice in the **Federal Register** for all matching programs.

The Privacy Act, as amended, regulates the use of computer-matching by Federal agencies when records contained in a Privacy Act System of Records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer-matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments. The last notice for this matching program was published at 73 FR 2287–2288 (January 14, 2008).

B. RRB Computer Matches Subject to the Privacy Act

We have taken appropriate action to ensure that all of our computer-matching programs comply with the requirements of the Privacy Act, as amended.

Notice of Computer-Matching Program, RRB With the Office of Personnel Management (OMB)

A. Name of Participating Agencies

OPM and RRB.

B. Purpose of the Matching Program

The purpose of the match is to enable the RRB to (1) identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB, and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately.

C. Authority for Conducting the Match

Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act, as amended, 45 U.S.C. 231b(a)(1), 231c(a)(1) and 231c(f)(1) require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own non-covered earnings. We call this reduction a Public Service Pension (PSP) offset.

Section 224 of the Social Security Act, as amended, 42 U.S.C. 424a, provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). We call this a PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any

Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. Section 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

D. Categories of Records and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows: OPM will provide the RRB once a year via secure encrypted electronic transfer, data extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Records designation is OPM/Central-1, (Civil Service Retirement and Insurance Records), Published in the **Federal Register** on October 8, 1999 (64 FR 54930) and amended on May 3, 2000 (65 FR 25775). The RRB Privacy Act System of Records is RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System, published in the **Federal Register** on July 26, 2010 (75 FR 43727).

Normally in December of each year, OPM transmits to us approximately 2.5 million electronic records for matching. The records contain these data elements: Name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of current gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against approximately the 1.2 million records in our files. For records that match, the RRB will extract the civil service payment information.

E. Inclusive Dates of the Matching Program

This matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

Dated: August 24, 2010.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 2010–21506 Filed 8–27–10; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974, as amended; Notice of Computer Matching Program (Railroad Retirement Board and Social Security Administration, Match Number 1007)

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of a renewal of an existing computer-matching program that expires on January 6, 2011.

SUMMARY: As required by the Privacy Act of 1974, as amended, the RRB is issuing public notice of its renewal of an ongoing computer-matching program with the Social Security Administration (SSA). The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match. The RRB is also issuing public notice, on behalf of the SSA, of their intent to conduct a computer-matching program based on information provided to them by the RRB.

DATES: This matching program becomes effective as proposed without further notice on October 12, 2010. We will file a report of this computer-matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Grant, Chief Privacy Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone 312–751–4869 or e-mail at *tim.grant@rrb.gov.*

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988, (Pub. L. 100–503), amended by the Privacy Act of 1974, (5 U.S.C. 552a) as amended, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** for all matching programs.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records contained in a Privacy Act System of Records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments. The last notice for this matching program was published at 73 FR 31516–31517 (June 2, 2008).

B. RRB Computer Matches Subject to the Privacy Act

We have taken appropriate action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Notice of Computer Matching Program, RRB With the SSA, Match 1007

A. Name of Participating Agencies

Railroad Retirement Board (RRB) and the Social Security Administration (SSA).

B. Purpose of the Matching Program

The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement

Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f)). The benefit information is needed to adjust the tier I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

Second, the RRB will receive from SSA the amount of certain Social Security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain Social Security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a Social Security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of Social Security benefits. This information is not available from any other source.

Third, once a year the RRB will receive from SSA a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation adjustments quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive weekly from RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation. This information is available from no other source.

SSA will also receive daily from RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231q(2)) requires that earnings considered as compensation under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security Act if the person has less than 10 years of railroad service or has 10 or more years of service but does not have a current connection with the railroad industry at the time of his/her death.

C. Authority for Conducting the Match

Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act. Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f)) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the re-computation of benefits.

D. Categories of Records and Individuals Covered

All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any Social Security wages and the amount of any Social Security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB.

The applicable RRB Privacy Act Systems of Records and their **Federal Register** citation used in the matching program are:

1. RRB–5, Master File of Railroad Employees' Creditable Compensation; FR 75 43715 (July 26, 2010);

2. RRB–22, Railroad Retirement, Survivor, Pensioner Benefit System; FR 75 43727 (July 26, 2010).

The applicable SSA Privacy Act Systems of Records used and their **Federal Register** citation used in the matching program are:

1. SSA 60–0058, Master Files of Social Security Number (SSN) Holders and SSN Applications (the Enumeration System); 74 FR 62866 (December 1, 2009)

2. SSA/OSR, 60–0059, Earnings Recording and Self-Employment Income System (MEF); 71 FR 1819 (January 11, 2006)

3. SSA/OSR 60–0090, Master Beneficiary Record (MBR); 71 FR 1826 (January 11, 2006)

4. SSA/ODISSIS 60–103, Supplemental Security Income Record and Special Veteran Benefits; 71 FR 1830 (January 11, 2006)

5. SSA/OPB 60–0269, Prisoner Update Processing System (PUPS); 64 FR 11076 (March 8, 1999)

E. Inclusive Dates of the Matching Program

This matching program will become effective January 6, 2011 or 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is latest. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

Dated: August 24, 2010.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 2010–21507 Filed 8–27–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12258 and #12259]

Iowa Disaster #IA–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1930–DR), dated 07/29/2010.

Incident: Severe storms, flooding, and tornadoes.

Incident Period: 06/01/2010 and continuing.

Effective Date: 08/23/2010.

Physical Loan Application Deadline Date: 09/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/29/2011.

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 Private Non-Profit organizations in the State of Iowa, dated 07/29/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Calhoun, Clarke, Dallas, Keokuk, Washington, Hamilton, Ida.

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. 2010–21539 Filed 8–27–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Gulf Opportunity Pilot Loan Program (GO Loan Pilot)

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of extension of waiver of regulatory provisions.

SUMMARY: This notice announces the extension of the "Notice of waiver of regulatory provisions" for SBA's GO Loan Pilot until September 30, 2011. Due to the scope and magnitude of the devastation to Presidentially-declared disaster areas resulting from Hurricanes Katrina and Rita as well as the further devastation by the BP Oil Spill that began on April 20, 2010, the Agency is extending its full guaranty and streamlined and centralized loan processing available through the GO Loan Pilot to small businesses in the eligible parishes/counties through September 30, 2011.

DATES: The waiver of regulatory provisions published in the **Federal Register** on November 17, 2005, is extended under this Notice until September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–7530; *gail.hepler@sba.gov.*

SUPPLEMENTARY INFORMATION: On November 8, 2005, SBA initiated the GO Loan Pilot program which was designed to provide expedited small business financial assistance to businesses located in those communities severely impacted by Hurricanes Katrina and Rita. Under this unique initiative, SBA provides its full (85%) guaranty and streamlined and centralized loan processing to all eligible lenders that agree to make expedited SBA 7(a) loans available to small businesses located in, locating to or re-locating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina and Rita, plus any contiguous parishes/counties.

To maximize the effectiveness of the GO Loan Pilot, on November 17, 2005, SBA published a notice in the **Federal Register** waiving for the GO Loan Pilot certain Agency regulations for the 7(a) Business Loan Program. (70 FR 69645). Because the pilot was designed as a temporary program scheduled to expire on September 30, 2006, and was extended to September 30, 2010, the waiver of certain Agency regulations also is due to expire on September 30, 2010. However, the Agency believes that there is a continuing, substantial need for the specific SBA assistance provided by this pilot in the affected areas.

When compared to other similarly-sized Section 7(a) loans, the GO Loan portfolio is performing very well, at about one-half the rate of liquidation and one-quarter the rate of loan purchase compared to all other 7(a) loans of $150,000 or less. In addition, the demand for GO Loans has continued during FY2010 in response to the ongoing need to rebuild the Gulf Coast areas devastated by Hurricanes Katrina and Rita. The annualized number of GO Loans approved in FY 2010 is about the same as the number of approvals for FY 2009 at approximately 560 loans per year. Also, the Deepwater BP oil spill that began April 20, 2010, has further devastated the Gulf Coast region and adversely affected many small businesses.

Thus, the Agency believes it is appropriate to extend this unique and vital program through September 30, 2011. Accordingly, the SBA is also extending its waiver of the Agency regulations identified in the **Federal Register** notice at 70 FR 69645 through September 30, 2011. SBA's waiver of these provisions is authorized by regulations. These waivers apply only to those loans approved under the GO Loan Pilot and will last only for the duration of the Pilot, which expires September 30, 2011. As part of the GO Loan Pilot, these waivers apply only to those small businesses located in, locating to, or relocating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina or Rita, plus any contiguous parishes/counties. A list of all eligible parishes/counties will be included in an SBA procedural notice that will announce the extension of the GO Loan Pilot.

Authority: 15 U.S.C. 636(a)(24); 13 CFR 120.3.

Eric R. Zarnikow,

Associate Administrator, Office of Capital Access.

[FR Doc. 2010–21436 Filed 8–27–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Meeting

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: Friday, September 24, 2010 from 9 a.m. to 5 p.m. in the Eisenhower Conference room, side b, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration.

The purpose of the meeting is to finalize preparations for the 2010 Annual Report to SBA's Administrator, Associate Administrator for Veterans Business Development, Congress, and the President.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by September 10, 2010 by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, Telephone number: (202) 619–1697, Fax number: 202–481–6085, e-mail address: *cheryl.simms@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 619–1697; e-mail address: *cheryl.simms@sba.gov,* SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: August 24, 2010.

Dan S. Jones,

SBA Committee Management Officer.

[FR Doc. 2010–21534 Filed 8–27–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62759; File No. SR–Phlx–2010–111]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change to the Automated Opening System

August 23, 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 August 9, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1017, Openings in Options, to reflect a system change to (i) modify the manner in which the PHLX XL® automated options trading system[3] calculates the Opening Quote Range for an options series during the automated opening process, and (ii) terminate the opening process when away markets become crossed during the opening process. A new opening process for the affected series would commence at the time the Away Best Bid/Offer ("ABBO") is uncrossed.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com,* on the Commission's Web site at *http://www.sec.gov,* 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the manner in which the PHLX XL® automated options trading system calculates the Opening Quote Range ("OQR") in an options series during the automated opening process. The OQR is a price range outside of which the Exchange will not open an option series. The proposal also reflects new system functionality to state that if, at any point during the opening process the ABBO becomes crossed (*e.g.,* 1.05 bid, 1.00 offer), the opening process will be terminated and the Exchange will not open the affected series. A new opening process for the affected series will commence at the time the ABBO is uncrossed.

OQR

Currently, the PHLX XL system calculates the OQR for a particular series based upon the lowest quote bid on the Exchange and the highest quote offer on the Exchange among quotes that are compliant with the bid/ask differentials set forth in Rule 1014(c)(i)(A)(1)(a) ("valid width quotes".)[4] To determine the minimum value for the OQR, an amount, as defined in a table determined by the Exchange, is subtracted from the lowest quote bid. To determine the maximum value for the OQR, an amount, as defined in a table determined by the Exchange, is added to the highest quote offer. Quotes that are not valid width quotes and quotes that are outside of the OQR are not included in the Exchange's automated opening process.

The Exchange proposes to modify the PHLX XL system and Exchange Rule 1017(l) to reflect the new manner in which the PHLX XL system calculates the OQR under certain circumstances. The manner in which the PHLX XL system calculates the OQR will depend upon whether there is a valid ABBO on markets other than the PHLX.

As stated above, the PHLX XL system currently calculates a lowest bid and highest offer to use as a reference price on which to calculate the OQR. Under the proposal, Rule 1017(l)(ii) would be modified to state that a highest bid and lowest offer will be used when there are opening quotes[5] or orders on the Exchange that lock or cross each other and there is no imbalance[6] at the Exchange's opening price. The purpose of this provision is to tighten the range of allowable opening prices and enable the system to open a series by using PHLX quotes when there are opening trades that will leave no imbalance.

The PHLX XL system currently calculates the OQR without regard to away market(s) in the affected series. The Exchange proposes to modify this provision by enabling the PHLX XL system to consider the away market(s) in the affected series when calculating the OQR. Under the proposal, Rule 1017(l)(iii) would be modified to address the situation where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest quote bid and lowest quote offer, and one or more away markets have disseminated opening quotes in the affected series. In this situation, the PHLX XL system will calculate an OQR based upon valid width quotes received by the Exchange and quotes that are disseminated by the away market(s).

In this situation, to determine the minimum value for the OQR, an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

[4] Rule 1014(c)(i)(A)(1)(a) permits bid/ask differentials of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

[5] The PHLX XL system will consider only opening valid width quotes on the Exchange in its determination of the highest quote bid and lowest quote offer.

[6] An "imbalance" occurs where there is unexecutable trading interest at a certain price. *See* Exchange Rule 1017(l)(ii)(A).

amount, as defined in a table to be determined by the Exchange,[7] will be subtracted from the highest quote bid among valid width quotes on the Exchange and on the away market(s). Under the current method, the minimum value of the OQR is determined by subtracting the amount in the table from the lowest bid on the Exchange only. To determine the maximum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be added to the lowest quote offer among valid width quotes on the Exchange and on the away market(s). Under the current method, the maximum value of the OQR is determined by adding the amount in the table to the highest bid on the Exchange only. This new method of calculating the OQR is intended to narrow the OQR, and to consider better-priced away markets' quotations in determining the reference price from which to calculate the OQR. The Exchange believes that this should result in higher quality executions at the opening of trading.

Proposed new Rule 1017(l)(iii)(A)(3) addresses the situation where there are away markets and the PHLX opening market is crossed or crosses away markets. If one or more away markets have disseminated opening quotes that are not crossed, and there are valid width quotes on the Exchange that cross each other or that cross away market quotes, the minimum value for the OQR will be the highest quote bid among quotes on away market(s). The maximum value for the OQR will be the lowest quote offer among quotes on away market(s). The purpose of this provision is to maintain market efficiency at the opening of trading when the PHLX market is crossed but there are away markets that the system can use as the OQR. The PHLX XL system will not add to the lowest away offer or subtract from the highest away bid in this situation in order to prevent an opening trade that would be through the ABBO.

Proposed new Rule 1017(l)(iv) addresses the situation where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest quote bid and lowest quote offer, and no away markets have disseminated opening quotes in the affected series.[8] In this situation, to determine the minimum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be subtracted from the highest quote bid among valid width quotes on the Exchange only. To determine the maximum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be added to the lowest quote offer among valid width quotes on the Exchange only.

Proposed new Rule 1017(l)(iv)(A)(3) addresses the situation where there is an imbalance and there are opening quotes on the Exchange that cross each other, and there is no away market in the affected series. In this situation, the minimum value for the OQR will be the lowest quote bid among valid width quotes on the Exchange, and the maximum value for the OQR will be the highest quote offer among valid width quotes on the Exchange. The purpose of this provision is to maintain market efficiency at the opening of trading when there is an imbalance, and when the PHLX market is crossed but there are no away markets that the system can consider as the OQR. The PHLX XL system will not add to the highest quote offer on the Exchange or subtract from the lowest quote bid on the Exchange in order to ensure that the OQR is as narrow as possible when there are opening quotes on the PHLX that cross each other.

Crossed ABBO During the Opening Process

Proposed new Rule 1017(l)(ix) provides that if, at any point during the opening process the ABBO becomes crossed, the opening process will be terminated and the Exchange will not open the affected series. A new opening process for the affected series will commence at the time the ABBO is uncrossed. The purpose of this provision is to ensure that the PHLX XL system does not route contracts that cannot be executed on the PHLX to away markets that may be disseminating incorrect prices that cross another market, thus protecting investors in general from entering into executions at incorrect prices.

Technical Re-Numbering Amendment

The Exchange proposes to re-number existing rules 1017(l)(iv)—(vii) to reflect the insertion of new proposed Rule 1017(i)(iv). There are no proposed substantive amendments to these existing rules.

Deployment

Although the proposed rule change is effective upon filing, the Exchange anticipates that it will deploy the new PHLX XL functionality described herein on or around September 15, 2010.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is 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. Specifically, the Exchange believes that the proposal benefits customers by improving prices and market efficiency at the opening of trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. Therefore, the proposal is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(5) of Rule 19b–4 thereunder.[12]

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

[7] The Exchange maintains the OQR table on its Web site. Changes to the OQR table are communicated to members by way of an Options Trader Alert ("OTA") posted on the Web site.

[8] This condition could be due to system issues, order imbalances, and other factors that would cause an away market not to disseminate an opening quote. This section of the proposed rule would also apply to issues that are singly listed on PHLX, in which case there is no other market that could quote in the affected series.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(5).

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–Phlx–2010–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–111 and should be submitted on or before September 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21473 Filed 8–27–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62760; File No. SR–Phlx–2010–112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Trade Reporting

August 24, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 10, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Options Floor Procedure Advice ("OFPA") F–2 Allocation, Time Stamping, Matching and Access to Matched Trades, and Exchange Rule 1051, General Comparison and Clearance Rule, to state that late reports of transactions in complex spread transactions executed in open outcry may be considered "exceptional circumstances" under the rule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify certain factors that the Exchange may consider to be "exceptional circumstances" when determining whether an Exchange member has engaged in a pattern or practice of late trade reporting.[5]

Currently, OFPA F–2 and Rule 1051 require a member or member organization initiating an options transaction, whether acting as principal or agent, to report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Each also states that a pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

The Exchange proposes to modify OFPA F–2 and Rule 1051 to state that, in determining whether exceptional circumstances exist, the Exchange may consider late reports resulting from open outcry executions in: (i) A hedge order (as defined in Rule 1066(f)); [6] (ii)

[5] The proposal is not intended to limit the Exchange to these factors in determining whether exceptional circumstances exist.

[6] Rule 1066(f) defines a hedge order is any spread type order (including a spread, straddle and combination order) for the same account or tied hedge order as defined below:

(1) Spread Order. A spread order is an order to buy a stated number of option contracts and to sell a stated number of option contracts in a different series of the same option and may be bid for or offered on a total net debit or credit basis.

(A) Inter-Currency Spread Order. In the case of foreign currency options, a spread order may consist of an order to buy a stated number of option contracts in one foreign currency and to sell the same number of option contracts in a different foreign currency option.

(2) Straddle Order. A straddle order is an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share)

a synthetic option (as defined in Rule 1066(g)); [7] or (ii) any other order consisting of multiple option and/or stock components.

Currently, in order to establish whether a member or member organization has engaged in a pattern or practice of violating a specific order handling rule the Exchange may aggregate, or "batch," individual violations of order handling OFPAs, and consider such "batched" violations as a single occurrence of a violation by a member or member organization over a specific time period.[8] Late trade reporting is currently included in the Exchange's "batching" program. The Exchange has observed that a disproportionate number of late trade reports are due to transactions in complex spread transactions executed in open outcry.[9]

Hedge orders and synthetic options are presented as a single order [sic] in the crowd, often including multiple option and/or stock components, on a net debit or credit basis. It is not unusual for the individual components of such an order to be executed at different times (especially in situations involving the execution of a stock component on an away equity market). Therefore, some components of the order may be executed while other components are pending execution. In many cases execution of the entire hedge or synthetic option order takes longer than 90 seconds to complete, resulting in late reporting for the individual components upon completion of the entire order at the net debit or credit price.

The Exchange believes that the inclusion of late trade reporting violations in the "batch" of violations respecting hedge or synthetic order transactions in open outcry unfairly penalizes a member or member organization engaging in legitimate hedge and synthetic option orders and thus proposes, when determining whether exceptional circumstances exist, to consider late reports of transactions in such orders executed in open outcry to be "exceptional circumstances" under the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it is 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. Specifically, the Exchange believes that the proposal benefits customers by encouraging Exchange Floor Brokers, market makers and specialists to introduce and/or participate in legitimate complex transactions in open outcry without being penalized for late trade reporting in the specific instances described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–112 on the subject line.

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or the same underlying foreign currency (in the case of options on a foreign currency) and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency) and having the same exercise price and expiration date (*e.g.,* an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted stock option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option.

(3) Combination Order. A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security and representing the same number of shares at option (if the underlying security is a stock or Exchange-Traded Fund Share) or the same number of foreign currency units (if the underlying security is a foreign currency). A combination order includes a conversion (generally, buying a put, selling a call and buying the underlying stock or Exchange-Traded Fund Share) and a reversal (generally, selling a put, buying a call and selling the underlying stock or Exchange-Traded Fund Share). In the case of adjusted option contracts, a combination order need not consist of the same number of shares at option.

(4) Tied Hedge Order. A tied hedge order is an option order that is tied to a hedge transaction as defined in Commentary .04 to Rule 1064, following the receipt of an option order in a class determined by the Exchange as eligible for "tied hedge" transactions.

A tied hedge order involves buying or selling a stock, security futures or futures position following receipt of an option order, including a complex order, but prior to announcing such order to the trading crowd, provided that certain conditions are met. *See* Rule 1064, Commentary .04.

[7] Rule 1066(g) defines a synthetic option order as an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with either (i) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock or convertible security necessary to create a delta neutral position, or (ii) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock as, and on the opposite side of the market from, the stock or convertible security portion of the order.

[8] Exchange Rule 970.01 states that, for purposes of imposing fines under the Options Floor Procedure Advices ("OFPAs"), when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Exchange may aggregate, or "batch," individual violations of order handling OFPAs, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F–6). In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

[9] This proposal applies only to executions in open outcry, and not to complex orders executed and reported automatically by the Exchange's Complex Order System. *See* Exchange Rule 1080.08.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Paper comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2010–112 and should be submitted on or before September 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21474 Filed 8–27–10; 8:45 am]

BILLING CODE 8010–01–P

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form has been submitted to the Office of Management and Budget (0MB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—22

Title: Claim Documentation Form—Conscientious Objector.

Need and/or Use: The form will be used to document a claim for classification as a conscientious objector in the event that inductions into the Armed Forces are resumed.

Respondents: Registrants who claim to be conscientious objectors.

Burden: A burden of one hour per individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: August 19, 2010.

Lawrence G. Romo,

Director.

[FR Doc. 2010–21416 Filed 8–27–10; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice 7136]

Culturally Significant Object Imported for Exhibition Determinations: "Ivory Mirror Case"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition "Ivory Mirror Case," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about September 15, 2010, until on or about September 15, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 23, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–21590 Filed 8–27–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7140]

Culturally Significant Objects Imported for Exhibition Determinations: "Treasures of Moscow: Icons From the Andrey Rublev Museum"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Treasures of Moscow: Icons from the Andrey Rublev Museum," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Museum of Russian Icons, Clinton, MA, from on or about October 23, 2010, until on or about July 25, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of

[12] 17 CFR 200.30–3(a)(12).

these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 23, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–21567 Filed 8–27–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7138]

Culturally Significant Objects Imported for Exhibition Determinations: "Treasures of Heaven: Saints, Relics, and Devotion in Medieval Europe"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Treasures of Heaven: Saints, Relics, and Devotion in Medieval Europe," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Cleveland Museum of Art, Cleveland, OH, from on or about October 17, 2010, until on or about January 17, 2011; The Walters Art Museum, Baltimore, MD, from on or about February 13, 2011, until on or about May 15, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 23, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–21584 Filed 8–27–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7137]

Culturally Significant Objects Imported for Exhibition Determinations: "Chaos and Classicism: Art in France, Italy, and Germany, 1918–1936"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Chaos and Classicism: Art in France, Italy, and Germany, 1918–1936," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Museum, New York, NY, from on or about October 1, 2010, until on or about January 9, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: August 23, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–21587 Filed 8–27–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7139]

Culturally Significant Objects Imported for Exhibition Determinations: "The Pre-Raphaelite Lens: British Photography and Painting, 1848–1875"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "The Pre-Raphaelite Lens: British Photography and Painting, 1848–1875," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about October 31, 2010, until on or about January 30, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: August 23, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–21581 Filed 8–27–10; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2011 Tariff-rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar, and Sugar-containing Products; Revision

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; revision.

SUMMARY: The Office of the United States Trade Representative (USTR)

published a notice in the **Federal Register** of August 17, 2010 concerning Fiscal Year 2011 tariff-rate quota allocations of raw cane sugar, refined and special sugar, and sugar-containing products. USTR is revising the effective date of that notice to September 1, 2010 from October 1, 2010.

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

ADDRESSES: Inquiries may be mailed or delivered to Leslie O'Connor, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Leslie O'Connor, Office of Agricultural Affairs, telephone: 202–395–6127 or facsimile: 202–395–4579.

SUPPLEMENTARY INFORMATION: On August 19, 2010, the Secretary of Agriculture announced that sugar entering the United States under the Fiscal Year 2011 raw sugar tariff-rate quota will be permitted to enter the U.S. Customs Territory beginning September 1, 2010, a month earlier than the beginning of Fiscal Year 2011 on October 1, 2010. Accordingly, USTR is revising the effective date of its notice of allocation to accommodate the Secretary's announcement. All other information contained in the August 17, 2010 USTR notice remains unchanged and will not be repeated in this notice.

Ronald Kirk,

United States Trade Representative.

[FR Doc. 2010–21524 Filed 8–27–10; 8:45 am]

BILLING CODE 3190–W0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2010–0015]

Notice and Modification of Action: Canada—Compliance with Softwood Lumber Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and modification of action.

SUMMARY: Under the 2006 Softwood Lumber Agreement (SLA), Canada agreed to impose export measures on Canadian exports of softwood lumber products to the United States. At the request of the United States, an arbitral tribunal established under the SLA determined in March 2008 that Canada had breached certain SLA obligations. In February 2009, the tribunal issued a remedy award instructing Canada to collect an additional 10 percent *ad valorem* export charge on softwood lumber shipments from Ontario, Quebec, Manitoba, and Saskatchewan, until an entire amount of CDN $68 million has been collected. Canada did not begin collecting the additional export charge. In April 2009, the United States Trade Representative ("Trade Representative") initiated an investigation under Section 302 of the Trade Act of 1974, as amended ("Trade Act"). In that investigation, the Trade Representative determined that Canada's failure to implement the tribunal's remedy award had the effect of denying U.S. rights under the SLA; and, pursuant to Section 301 of the Trade Act, the Trade Representative imposed 10 percent *ad valorem* duties on imports of softwood lumber products subject to the SLA from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan (the April 2009 action). Under the April 2009 action, the duties are to remain in place until such time as the United States collects $54.8 million, the U.S. dollar equivalent of CDN $68 million at the time. The Government of Canada, however, has now adopted its own measures to address Canada's breach of the SLA. In particular, Canada will begin collection of an additional 10 percent charge on exports of softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan, which will be effective with respect to softwood lumber products with a shipment date of September 1, 2010 or later. Per an understanding between the Governments of the United States and Canada, Canada will collect the additional 10 percent charge on exports until the total of the amounts collected under the U.S. import duty and the Canadian charge on exports is equal to CDN $68 million. The Trade Representative has determined that Canada's measures satisfactorily grant the rights of the United States under the SLA. Accordingly, the Trade Representative has modified the April 2009 action by removing the 10 percent *ad valorem* duties on imports of softwood lumber products subject to the SLA from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan, effective with respect to imports with a shipment date of September 1, 2010 or later.

DATES: The modification of the April 2009 action is effective with respect to imports of softwood lumber products subject to the SLA from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan with a shipment date of September 1, 2010 or later.

FOR FURTHER INFORMATION CONTACT: John Melle, Deputy Assistant USTR for the Americas, (202) 395–3412, or Suzanne Garner, Assistant General Counsel, (202) 395–9663, for questions concerning the enforcement of U.S. rights under the SLA; Heather Sykes, Chief, Trade Policy Branch, U.S. Customs and Border Protection, Department of Homeland Security, (202) 863–6099, for questions concerning entries of softwood lumber products, or William Busis, Chair of the Section 301 Committee and Deputy Assistant USTR for Monitoring and Enforcement, (202) 395–3150, for questions concerning procedures under Section 301.

SUPPLEMENTARY INFORMATION:

A. Enforcement of U.S. rights under the SLA

For further information concerning U.S. rights under the SLA and the April 2009 action, see *Initiation of Section 302 Investigation, Determination of Action Under Section 301, and Request for Comments: Canada—Compliance With Softwood Lumber Agreement,* 74 FR 16,436 (April 10, 2009) (notice); 74 FR 17,276 (April 14, 2009) (annex).

B. Canada's Measures Addressing the Breach of the SLA

Canada has adopted measures to comply with the February 2009 remedy award by imposing a 10 percent export charge on exports of softwood lumber products subject to the SLA from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. Canada enacted the necessary legislation, in the form of an amendment to the Softwood Lumber Products Export Charge Act, 2006, with parliamentary approval and royal assent on July 12, 2010. On August 4, 2010, Canada issued an Order in Council setting September 1, 2010 as the date to begin imposing the 10% charge on shipments of softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan.

Per an understanding between the Governments of the United States and Canada, Canada will collect the additional 10 percent charge on exports until the total of the amounts collected under the U.S. import duty and the Canadian charge on exports is equal to CDN $68 million. The understanding also provides for the United States and Canada to exchange information on the ongoing amounts collected under the U.S. import duty and the Canadian charge on exports.

C. Public Comment

In May 2010, the Section 301 Committee invited comments from interested persons with respect to the

possible modification or termination of the April 2009 action in the event the Government of Canada adopted a law imposing an additional 10 percent export charge on softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. See 75 FR 30097 (May 28, 2010).

D. Modification of April 2009 Action

Section 307 of the Trade Act authorizes the Trade Representative to modify or terminate an action taken under Section 301 if, among other things, "the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement." Sections 301(a)(2)(B)(i) and 307(1)(A). Pursuant to the recommendations of the Trade Policy Staff Committee and the Section 301 Committee, and taking account of the comments received in response to the May 2010 notice, the Trade Representative has determined: (1) That Canada's adoption of the July 2010 amendment to the Softwood Lumber Products Export Charge Act, 2006, and the August 2010 Order in Council constitute "satisfactory measures"; and (2) to modify the April 2009 action by removing the 10% import duty on entries of softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan with a shipment date of September 1, 2010 or later. In order to prevent any gap in collection of the charge, the 10% import duty will continue to apply to entries after September 1, 2010 with a shipment date of August 31, 2010 or earlier.

In accordance with the Trade Representative's determination to modify the April 2009 action, and effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2010, U.S. Note 13 to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified by deleting subdivision (i) and inserting the following new subdivision in lieu thereof:

"(i) The additional duties provided for in subheading 9903.53.01 shall apply to articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2010, if the Canadian export permits associated with the entries display a shipment date prior to September 1, 2010. The additional duties provided for in subheading 9903.53.01 shall not apply to articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2010, if the Canadian export permits associated with the entries display a shipment date of September 1, 2010 or later."

E. Section 306 Monitoring

Pursuant to Section 306(a) of the Trade Act, the Trade Representative will continue to monitor the implementation of Canada's measures imposing a 10 percent export charge on exports of softwood lumber products subject to the SLA from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. Pursuant to Section 306(b), if the Trade Representative considers that Canada is not satisfactorily implementing these measures, the Trade Representative will determine what further action to take under Section 301.

William L. Busis,

Chair, Section 301 Committee.

[FR Doc. 2010–21486 Filed 8–27–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 14, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0202.

Date Filed: August 9, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 2010.

Description: Application of Gama Aviation Limited requesting a foreign air carrier permit and exemption authority to engage in charter foreign air transportation of persons, property and mail to the full extent authorized by the Air Transport Agreement between the European Community and its Member States, and the United States: (i) From any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) between any point or points in the United States and any point or points in any member of the European Common Aviation Area; and (iii) other charter.

Docket Number: DOT–OST–2007–26980.

Date Filed: August 11, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 2010.

Description: Application of Jade Cargo International Company Limited requesting an amendment of its pending application for a foreign air carrier permit and requests an exemption authorizing it to engage in: (1) Scheduled foreign air transportation of property and mail from any point or points in the People's Republic of China, via any intermediate points, to any point or points in the United States open to scheduled international operations, and beyond to any points outside the United States; (2) charter foreign air transportation of property and mail from any point or points in the People's Republic of China, on the one hand, and any point or points in the United States, on the other hand; and (3) other charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–21508 Filed 8–27–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0242]

Public Listening Session

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

ACTION: Announcement of public listening session; request for comment.

SUMMARY: FMCSA announces it will hold a public listening session to solicit input on key challenges facing the motor carrier industry, issues facing stakeholders, and concerns that should be considered by the Agency in developing its next 5-year Strategic Plan. FMCSA invites interested persons to participate in this important opportunity to help build FMCSA's next strategic plan. This notice also invites written comments, suggestions, and recommendations from all individuals and organizations on FMCSA's mission, vision, and strategic objectives (goals) for the plan.

DATES: The public meeting will be held September 8, 2010, in three consecutive listening sessions:

Safety Partners, 8 a.m. to 10 a.m.

Industry Partners, 10 a.m. to 12 p.m.

Enforcement Partners, 12 p.m. to 2 p.m.

Submit comments for discussion at the listening session by September 1, 2010.

Additional written comments may be submitted by September 30, 2010.

ADDRESSES: Holiday Inn Washington-Capitol, 550 C Street, SW., Washington, DC 20024.

You may submit comments (identified by DOT Docket ID Number FMCSA–2010–0242) by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site listed below. This provides for the most efficient and timely receipt and processing of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. It is suggested that comment submissions be limited to ten (10) pages with unlimited attachments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Refer to the Privacy Act heading of this notice for further information.

Public Participation: The regulations.gov system is generally available 24 hours a day, 365 days a year. You can find electronic submission and retrieval help and guidelines under the "Help" section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Copies or abstracts of all documents referenced in this notice are in the docket. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Services for Individuals with Disabilities: For assistance with services for individuals with disabilities or to request special assistance, please send your request to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or e-mail your request to tretha.chromey@dot.gov by Wednesday, September 1, 2010.

Privacy Act: Anyone is able to search the electronic form of all comments received in 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, pp. 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Tretha Chromey, Office of Policy and Program Development, Strategic Planning and Program Evaluation Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; telephone (202) 366–1630 or e-mail *tretha.chromey@dot.gov* or *FMCSAStrategicPlan@dot.gov.* Office hours are 9 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The primary mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries, and fatalities involving large trucks and buses. Established as a separate administration within the U.S. Department of Transportation (DOT) on January 1, 2000, FMCSA is headquartered in Washington, DC. The Agency employs more than 1,000 people in all 50 States and the District of Columbia, who are dedicated to improving the safety of commercial motor vehicles (CMVs) and saving lives.

In carrying out its safety mandate to reduce crashes, injuries, and fatalities involving large trucks and buses, FMCSA engages in a variety of regulatory, enforcement, outreach, educational, and research activities. FMCSA's Administrator has outlined three core principles for the Agency:

- Raise the safety bar to enter the motor carrier industry;
- Maintain high safety standards to remain in the industry; and
- Remove high-risk carriers, drivers, and vehicles from operations.

Following are some of the key issues that the Agency hopes public comments will address. In addition to general comments, we seek any documents, studies, or references relevant to the issues. The public may respond to some or all of the questions below. FMCSA will consider all comments received but may not necessarily incorporate every comment into the strategic plan.

1. How should we strengthen FMCSA's role/mission of improving the safety of commercial motor vehicles (CMV) and saving lives as it relates to some of FMCSA's core program: Commercial motor vehicle compliance and enforcement, commercial driver licensing, household goods protection, safe and secure transportation of hazardous materials?

2. How can FMCSA have a greater impact in the reduction of injury and loss of life on the nation's highways?

3. How can FMCSA improve the way it does business, provides customer service, and interacts with all road user groups? What are some of the challenges you have in interacting with FMCSA that prevent you from conducting your business effectively? What actions should FMCSA take to improve interactions between CMV drivers and drivers of private vehicles? Please identify possible improvements or ideas for doing better.

4. How might FMCSA improve or strengthen its partnership with stakeholders representing State enforcement agencies, safety advocacy groups, the motor carrier industry, and the general public to achieve its safety mission?

5. How should FMCSA balance driver-focused, vehicle-focused, and motor carrier-focused compliance, interventions, and enforcement to achieve its safety mission?

6. How will advanced vehicle technologies (such as crash avoidance, electronic on-board recorders [EOBRs], and global positioning systems [GPS]) impact the future of driver behavior, vehicle safety, and motor carrier safety?

7. How will changes in the following areas impact the industry, your organization, and/or FMCSA's ability to achieve its mission in the future?
- Demographics
- Economics
- New policies in environment, energy, and other areas

8. What technological changes could positively impact highway safety?

9. How will technology affect driver behavior? What issues related to vehicle/driver interaction could affect safety performance?

Issued on: August 24, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–21509 Filed 8–27–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 23, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before September 29, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1270.

Type of Review: Extension without change to a currently approved collection.

Title: PS–66–93 (Final) Gasohol; Compressed Natural Gas; PS–120–90 (Final) Gasoline Excise Tax.

Abstract: PS–66–93 Buyers of compressed natural gas for a non taxable use must give a certificate. Persons who pay a "first tax" on gasoline must file a report. PS–120–90 Gasoline refiners, traders, terminal operators, chemical companies and gasohol blenders must notify each other of their registration status and/or intended use of product before transactions may be made tax-free.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 366 hours.

OMB Number: 1545–1338.

Type of Review: Extension without change to a currently approved collection.

Title: PS–103–90 (Final) (TD 8578) Election Out of Subchapter K for Producers of Natural Gas.

Abstract: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5 hours.

OMB Number: 1545–2167.

Type of Review: Extension without change to a currently approved collection.

Title: Notice 2010–28, Stripping Transactions for Qualified Tax Credit Bonds.

Abstract: The IRS requires the information to ensure compliance with the tax credit bond credit coupon stripping requirements, including ensuring that no excess tax credit is taken by holders of bonds and coupons strips. The information is required in order to inform holders of qualified tax credit bonds whether the credit coupons relating to those bonds may be stripped as provided under § 54A(i). The respondents are issuers of tax credit bonds, including states and local governments and other eligible issuers.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 1,000 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–21356 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Clarissa Potter, Deputy Chief Counsel (Technical)

2. Sara M. Coe, Deputy Division Counsel (Small Business/Self Employed)

3. Curtis Wilson, Associate Chief Counsel (Passthroughs & Special Industries)

4. Andrew Keyso, Deputy Associate Chief Counsel (Income Tax & Accounting)

5. Drita Tonuzi, Deputy Division Counsel (Large & Mid-Size Business)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: August 23, 2010.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2010–21325 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Christopher Meade, Principal Deputy General Counsel (Department of Treasury)

2. Richard Byrd, Commissioner (Wage & Investment)

3. Christopher Wagner, Commissioner (Small Business/Self Employed)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: August 23, 2010.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2010–21327 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720, Quarterly Federal Excise Tax Return.

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Quarterly Federal Excise Tax Return.

OMB Number: 1545–0023.

Form Number: 720.

Abstract: Form 720 is used to report (1) excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, (2) the tax on facilities and services, (3) environmental taxes, (4) luxury tax, and (5) floor stocks taxes. The information supplied on Form 720 is used by the IRS to determine the correct tax liability. Additionally the data is reported by the IRS to Treasury so that funds may be transferred from the general revenue fund to the appropriate trusts funds.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 405,744.

Estimated Time per Respondent: 10 hrs, 46 minutes.

Estimated Total Annual Burden Hours: 4,366,381.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 23, 2010.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2010–21476 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13094

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13094, Recommendation for Juvenile Employment with the Internal Revenue Service.

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3534, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Recommendation for Juvenile Employment with the Internal Revenue Service.

OMB Number: 1545–1746.

Form Number: 13049.

Abstract: The data collected on Form 13094 provides the Internal Revenue Service with a consistent method for making suitability determinations on juveniles for employment within the Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and not-for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Number of Respondents: 5 minutes.

Estimated Total Annual Burden Hours: 208.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 23, 2010.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2010–21479 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–149519–03]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation of proposed rulemaking, REG–149519–03, Section 707 Regarding Disguised Sales, Generally.

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 707 Regarding Disguised Sales, Generally.

OMB Number: 1545–1909.

Regulation Project Number: REG–149519–03.

Abstract: Section 707(a)(2) provides, in part, that if there is a transfer of money or property by a partner to a partnership and a related transfer of money or property by the partnership to another partner, the transfers will be treated as a disguised sale of a partnership interest between the partners. The regulations provide rules relating to disguised sales of partnership interests and require that the partners or the partnership disclose the transfers and certain assumptions of liabilities, with certain attendant facts, in some situations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22,500.

Estimated Time per Respondent: 2 hours.

Estimate Total Annual Burden Hours: 7,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 23, 2010.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2010–21481 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–147144–06; (TD 9446)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, REG–147144–06, (TD 9446) Section 1.367(a)–8, Gain Recognition Agreements With Respect to Certain Transfers of Stock or Securities by United States Persons to Foreign Corporations.

DATES: Written comments should be received on or before September 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Gain Recognition Agreements With Respect to Certain Transfers of Stock or Securities by United States Persons to Foreign Corporations.

OMB Number: 1545–2056.

Regulation Project Number: REG–147144–06. (TD 9446).

Abstract: This document contains final regulations under section 367(a) of the Internal Revenue Code (Code) concerning gain recognition agreements filed by United States persons with respect to transfers of stock or securities to foreign corporations. The regulations finalize temporary regulations published on February 5, 2007 (T.D. 9311, 2007–1 C.B. 635). The regulations primarily affect United States persons that transfer (or have transferred) stock or securities to foreign corporations and that will enter (or have entered) into a gain recognition agreement with respect to such a transfer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 170.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 240.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 20, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–21483 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120616–03 (TD 9346 Final Regulations and Removal of Temporary Regulations)]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–120616–03 (TD 9346), Entry of Taxable Fuel, (§§ 48.4081–1 and 48.4081–3).

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Entry of Taxable Fuel.

OMB Number: 1545–1897.

Regulation Project Number: REG–120616–03 (T.D. 9346 Final Regulations and Removal of Temporary Regulations).

Abstract: The regulation imposes joint and several liability on the importer of record for the tax imposed on the entry of taxable fuel into the U.S. and revises definition of "enterer".

Current Actions: This is a Final Regulation and Removal of Temporary Regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,125.

Estimated Time per Respondent: 1 hour, 25 minutes.

Estimated Total Annual Burden Hours: 281.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 23, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–21484 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2848, 2848(SP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2848, 2848(SP) Power of Attorney and Declaration of Representative.

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney and Declaration of Representative; Poder Legally Declaracion y del Representante.

OMB Number: 1545–0150.

Form Number: 2848; 2848(SP).

Abstract: Form 2848 or Form 2848(SP) is issued to authorize someone to act for the taxpayer in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. The information on the form is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons.

Current Actions: There are no changes being made to the form at this time, however, changes to the burden estimates previously approved will be submitted to properly reflect the current estimates.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

The burden estimate is as follows:

	Number of responses	Time per response	Total hours
Form 2848 (paper)	358,333	1.66	594,833
Form 2848 (on line)	100,000	1.61	161,000
Form 2848 (SP)	80,000	2.26	180,800
	538,333	.....	935,633

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 23, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–21485 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–88–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–88–90 (TD 8530), Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title 11 Case (Section 1.382–9).

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss

Corporation Under the Jurisdiction of a Court in a Title 11 Case.

OMB Number: 1545–1324.

Regulation Project Number: CO–88–90 (TD 8530).

Abstract: This regulation provides guidance on determining the value of a loss corporation following an ownership change to which section 382(1)(6) of the Internal Revenue Code applies. Under Code sections 382 and 383, the value of the loss corporation, together with certain other factors, determines the rate at which certain pre-change tax attributes may be used to offset post-change income and tax liability.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,250.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 813.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 17, 2010.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2010–21461 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–19–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulations, PS–19–92 (Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit, TD 9420—Section 42 Utility Allowance Regulations Update.

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.

OMB Number: 1545–1102.

Regulation Project Number: PS–19–92 (Final), TD 9420 (Final).

Abstract: The regulations provide the Service the information it needs to ensure that low-income housing tax credits are being properly allocated under section 42. This is accomplished through the use of carryover allocation documents, election statements, and binding agreements executed between taxpayers (*e.g.* individuals, businesses, *etc.*) and housing credit agencies.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,230.

Estimated Time per Respondent: 1 hour, 50 minutes.

Estimated Total Annual Burden Hours: 4,008.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 23, 2010.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2010–21477 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–99–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–99–91 (TD 8490), Limitations on Corporate Net Operating Loss (section 1.382–3).

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1345.

Regulation Project Number: CO–99–91.

Abstract: This regulation modifies the application of the segregation rules under Internal Revenue Code section 382 in the case of certain issuances of stock by a loss corporation. The regulation provides exceptions to the segregation rules for certain small issuances of stock and for certain other issuances of stock for cash. The regulation also provides that taxpayers may make an irrevocable election to apply the exceptions retroactively.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: August 23, 2010.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2010–21478 Filed 8–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Sound Incentive Compensation Guidance

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before October 29, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Richard B. Gaffin (202) 906–6181, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the

OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Sound Incentive Compensation Guidance.

OMB Number: 1550–0129.

Form Number: N/A.

Description: The guidance is based on three key principles that are designed to ensure that incentive compensation arrangements at a financial institution do not encourage employees to take excessive risks. These principles provide that incentive compensation arrangements should:

- Provide employees incentives that do not encourage excessive risk-taking beyond the organization's ability to effectively identify and manage risk;
- Be compatible with effective controls and risk management; and
- Be supported by strong corporate governance, including active and effective oversight by the organization's board of directors.

These principles and the guidance are consistent with the Principles for Sound Compensation Practices adopted by the Financial Stability Board (FSB) in April 2009, as well as the Implementation Standards for those principles issued by the FSB in September 2009.

This guidance will promote the prompt improvement of incentive compensation practices in the banking industry by providing a common prudential foundation for incentive compensation arrangements across banking organizations and promoting the overall movement of the industry towards better practices. Supervisory action could play a critical role in addressing misaligned compensation incentives, especially where issues of competition may make it difficult for individual firms to act alone. Through their actions, supervisors could help to better align the interests of managers and other employees with organizations' long-term health and reduce concerns that making prudent modifications to incentive compensation arrangements might have adverse competitive consequences.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 757.

Estimated Burden Hours per Responses: 40 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 30,280 hours.

Dated: August 24, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–21490 Filed 8–27–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Change to "Procedures To Qualify for Bulk Purchase of Gold Bullion Coins"

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint has revised the requirements to become an Authorized Purchaser of American Eagle Gold Bullion Coins. The revised qualification requirements are documented in the revised "Procedures to Qualify for Bulk Purchase of Gold Bullion Coins." (This document can be accessed at *http://www.usmint.gov/consumer/index.cfm?action=AmericanEagles*) These changes apply to new applications effective immediately. Significant modifications include clarifications to the "Purpose" section and "Marketing Support" section, and adjustments to the "Experienced Market-Maker in Gold Bullion Coins" section and "Tangible Net Worth" section. Changes to the accounting certification requirements and agreement terms and conditions are also incorporated. A new section has been added entitled "Right to Temporarily Refrain from the Review of New Applications," during periods in which the allocation of a bullion product is required. Other minor changes have been made which provide further clarifications to various production descriptions and/or the gold bullion coin program in accordance with 31 U.S.C. 5112(a)(7–11) and (i).

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5112(a)(7–11) and (i).

Dated: August 20, 2010.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 2010–21495 Filed 8–27–10; 8:45 am]

BILLING CODE P

Federal Register

Monday,
August 30, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 090511911–0307–02]

RIN 0648–AX89

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 91 is an innovative approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a prohibited species catch (PSC) limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years. This action is necessary to minimize Chinook salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maintaining the potential for the full harvest of the pollock total allowable catch. Amendment 91 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective September 29, 2010.

ADDRESSES: Electronic copies of Amendment 91, the Final Environmental Impact Statement (EIS), the Record of Decision (ROD), the Final Regulatory Impact Review (RIR), and the Biological Opinion prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Seanbob Kelly, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This final rule implements Amendment 91 to the FMP. In April 2009, the Council unanimously recommended Amendment 91 to the Secretary of Commerce. NMFS published a Notice of Availability of this amendment in the **Federal Register** on February 18, 2010 (75 FR 7228) with comments invited through April 19, 2010. NMFS published the proposed rule on March 23, 2010 (75 FR 14016) with comments invited through May 7, 2010. NMFS approved Amendment 91 on May 14, 2010. NMFS received 71 letters of public comment on Amendment 91 and the proposed rule. NMFS summarized these letters into 102 separate comments, and responds to them under Response to Comments, below.

The Bering Sea Pollock Fishery

This final rule applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Theragra chalcogramma*) fishery in the Bering Sea subarea of the BSAI. The Bering Sea pollock fishery is the largest single species fishery, by volume, in the United States. The first wholesale gross value of this fishery was more than 1.4 billion dollars in 2008. In 2010, the Bering Sea pollock total allowable catch (TAC) is 813,000 metric tons.

Currently, pollock in the BSAI is managed as three separate units: the Bering Sea subarea, the Aleutian Islands subarea, and the Bogoslof District of the Bering Sea subarea. Separate overfishing limits, acceptable biological catch limits, and TAC limits are specified annually for Bering Sea pollock, Aleutian Islands pollock, and Bogoslof pollock. Amendment 91 applies only to management of the Bering Sea pollock fishery and will not affect the management of pollock fisheries in the Aleutian Islands or the status of pollock fishing in the Bogoslof District.

The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note), which "rationalized" the pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. Under the AFA, 10 percent of the Bering Sea pollock TAC is allocated to the CDQ Program. After the CDQ Program allocation is subtracted, an amount needed for the incidental catch of pollock in other Bering Sea groundfish fisheries is subtracted from the TAC. The remaining "directed fishing allowance" is then allocated among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). Pollock allocations to the CDQ Program and the other three AFA sectors are further allocated annually between two seasons—40 percent to the A season (January 20 to June 10) and 60 percent to the B season (June 10 to November 1).

The CDQ Program pollock allocation is further allocated among the six non-profit corporations (CDQ groups) that represent the 65 communities eligible for the CDQ Program under section 305(i)(1)(D) of the Magnuson-Stevens Act. The CDQ Program also is described in more detail in the "Classification" section of this final rule. CDQ groups typically sell or lease their pollock allocations to harvesting partners, including vessels owned, in part, by individual CDQ groups. Although CDQ groups are not required to partner with AFA-permitted vessels to harvest CDQ pollock, the vessels harvesting CDQ pollock have been AFA permitted-vessels. The CDQ pollock allocations have most often been harvested by catcher/processors or catcher vessels delivering to a mothership. However, some pollock CDQ has been delivered to inshore processing plants in past years.

The AFA allows for the formation of fishery cooperatives within the non-CDQ sectors. The purpose of these AFA cooperatives is to further subdivide each sector's pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of

pollock among the cooperative members and enforce contract provisions.

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form inshore cooperatives associated with a particular inshore processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation. The amount of pollock allocated to each inshore cooperative is based on the member vessels' pollock catch history from 1995 through 1997, as required under section 210(b) of the AFA (16 U.S.C. 1851 note). These catcher vessels are not required to join an inshore cooperative. Those that do not join an inshore cooperative are managed by NMFS under the "inshore open access fishery."

The AFA catcher/processor sector is made up of the catcher/processors and catcher vessels eligible under the AFA to deliver pollock to catcher/processors. Owners of the catcher/processors that are listed by name in the AFA and still active in the pollock fishery have formed a cooperative called the Pollock Conservation Cooperative (PCC). Owners of the catcher vessels eligible to deliver pollock to the catcher/processors have formed a cooperative called the High Seas Catchers' Cooperative (HSCC).

The AFA mothership sector is made up of three motherships and the catcher vessels eligible under the AFA to deliver pollock to these motherships. These catcher vessels have formed a cooperative called the Mothership Fleet Cooperative (MFC). The MFC does not include the owners of the three motherships. The primary purpose of the cooperative is to sub-allocate the mothership sector pollock allocation among the catcher vessels authorized to harvest this pollock and to manage these allocations.

NMFS does not manage the sub-allocations of pollock among members of the PCC, HSCC, or MFC. The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing for pollock by a sector if vessels in that sector continue to fish once the sector's seasonal allocation of pollock has been harvested.

Chinook Salmon Bycatch in the Bering Sea Pollock Fishery

Chinook salmon are accidently caught in the nets as fishermen target pollock. The Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery that are not sold or kept for personal use. Therefore, Chinook salmon caught in the pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 of the Magnuson-Stevens Act requires the Council to select, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

Culturally and economically valuable species like Chinook salmon, which are fully allocated and, in some cases, facing conservation concerns, are classified as prohibited species in the groundfish fisheries off Alaska under the FMP. The prohibited species are Chinook salmon, all other species of salmon (a category called "non-Chinook salmon"), steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring. Bycatch of prohibited species is highly regulated and closely managed. The FMP requires that groundfish fishermen avoid bycatch of prohibited species. Additionally, any salmon bycatch must either be donated to the Prohibited Species Donation (PSD) Program under § 679.26, or returned to sea as soon as practicable, with minimum injury, after an observer has determined the number of salmon and collected any scientific data or biological samples.

The Bering Sea pollock fishery catches up to 95 percent of the Chinook salmon taken incidentally as bycatch in the BSAI groundfish fisheries. From 1992 through 2001, the average Chinook salmon bycatch in the Bering Sea pollock fishery was 32,482 fish. Bycatch increased substantially from 2002 through 2007, to an average of 74,067 Chinook salmon per year. A historic high of approximately 122,000 Chinook salmon were taken in the Bering Sea pollock fishery in 2007. However, Chinook salmon bycatch has declined in recent years to 20,559 in 2008 and 12,414 in 2009. For the 2010 pollock A season, and the pollock B season that opened on June 10, bycatch rates are comparable to the low bycatch rates in 2009. The causes of the decline in Chinook salmon bycatch in 2008, 2009, and 2010 are unknown. The decline is most likely due to a combination of factors, including changes in abundance and distribution of Chinook salmon and pollock, and changes in fleet behavior to avoid salmon bycatch.

Chinook salmon bycatch also varies seasonally and by sector. In most years, the majority of Chinook salmon bycatch occurs during the A season. Since 2002, catcher vessels in the inshore sector typically have caught the highest number of Chinook salmon and had the highest bycatch rates by sector in both the A and B seasons. As discussed in the EIS (*see* **ADDRESSES**), the variation in bycatch rates among sectors and seasons is due, in part, to the different fishing practices and patterns each sector uses to fully harvest their pollock allocations.

In years of historically high Chinook salmon bycatch in the Bering Sea pollock fishery (2003 through 2007), the rate of Chinook salmon bycatch averaged 52 Chinook salmon per 1,000 tons of pollock harvested. With so few salmon relative to the large amount of pollock harvested, Chinook salmon encounters are difficult to predict or avoid. Industry agreements that require vessel-level cooperation to share information about areas of high Chinook salmon encounter rates probably are the best tool that the industry currently has to quickly identify areas of high bycatch and to avoid fishing there. However, predicting these encounter rates will continue to be difficult, primarily because of the current lack of understanding of the biological and oceanographic conditions that influence the distribution and abundance of salmon in the areas where the pollock fishery occurs.

Chinook Salmon Stocks and Fisheries in Western Alaska

Chinook salmon taken in the pollock fishery originate from Alaska, the Pacific Northwest, Canada, and Asian countries along the Pacific Rim. Estimates vary, but more than half of the Chinook salmon bycatch in the pollock fishery may be destined for western Alaska. Western Alaska includes the Bristol Bay, Kuskokwim, Yukon, and Norton Sound areas. In general, western Alaska Chinook salmon stocks declined sharply in 2007 and remained depressed in 2008 and 2009. Chapter 5 of the EIS provides additional information about Chinook salmon biology, distribution, and stock assessments by river system or region (*see* **ADDRESSES**). NMFS is expanding biological sampling to improve data on the origins of salmon caught as bycatch in the pollock fishery.

Chinook salmon support subsistence, commercial, personal use, and sport fisheries in their regions of origin. The

State of Alaska Board of Fisheries adopts regulations through a public process to conserve fisheries resources and allocate them to the various users. The State of Alaska Department of Fish and Game (ADF&G) manages the salmon commercial, subsistence, sport, and personal use fisheries. The first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both State and Federal law. Chinook salmon serves as a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. Federal agencies where Federal rules apply under the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101–3233.

In recent years of low Chinook salmon returns, the in-river harvest of western Alaska Chinook salmon has been severely restricted and, in some cases, river systems have not met escapement goals. Surplus fish beyond escapement needs and subsistence use are made available for other uses. Commercial fishing for Chinook salmon may provide the only source of income for many people who live in remote villages. Chapter 3 of the RIR provides an overview of the importance of subsistence harvests and commercial harvests (*see* **ADDRESSES**).

Current Management of Chinook Salmon Bycatch in the Bering Sea and Aleutian Islands

Over the past 15 years, the Council and NMFS have implemented several management measures to limit Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, NMFS implemented an annual PSC limit of 48,000 Chinook salmon and specific seasonal no-trawling zones in the Chinook Salmon Savings Area that would close when the limits were reached (60 FR 31215; November 29, 1995). In 2000, NMFS reduced the Chinook Salmon Savings Area closure limit to 29,000 Chinook salmon, redefined the Chinook Salmon Savings Area as two non-contiguous areas of the BSAI (Area 1 in the AI subarea and Area 2 in the BS subarea), and established new closure periods (65 FR 60587; October 12, 2000).

Chinook salmon bycatch management measures were most recently revised under Amendments 84 to the FMP. The Council adopted Amendment 84 in October 2005 to address increases in Chinook and non-Chinook salmon bycatch that were occurring despite PSC limits that triggered closure of the Chinook and Chum Salmon Savings Areas.

Amendment 84 established in Federal regulations the salmon bycatch intercooperative agreement (ICA), which allows vessels participating in the Bering Sea pollock fishery to use their internal cooperative structure to reduce Chinook and non-Chinook salmon bycatch using a method called the voluntary rolling hotspot system (VRHS). Through the VRHS, industry members provide each other real-time salmon bycatch information so that they can avoid areas of high Chinook or non-Chinook salmon bycatch rates. The VRHS was implemented voluntarily by the fleet in 2002. Amendment 84 exempts vessels participating in the salmon bycatch reduction ICA from salmon savings area closures, and revised the Chum Salmon Savings Area closure to apply only to vessels directed fishing for pollock, rather than to all vessels using trawl gear. The exemptions to savings area closures for participants in the VRHS ICA were implemented by NMFS in 2006 and 2007 through an exempted fishing permit. Regulations implementing Amendment 84 were approved in 2007 (72 FR 61070; October 29, 2007), and NMFS approved the salmon bycatch reduction VRHS ICA in January 2008. Amendment 84 requires that parties to the ICA be AFA cooperatives and CDQ groups. All AFA cooperatives and CDQ groups participate in the VRHS ICA.

Using a system specified in regulations, the VRHS ICA assigns vessels in a cooperative to certain tiers, based on bycatch rates of vessels in that cooperative relative to a base rate, and implements large area closures for vessels in tiers associated with higher bycatch rates. The VRHS ICA managers monitor salmon bycatch in the pollock fisheries and announce area closures for areas with relatively high salmon bycatch rates. Monitoring and enforcement are accomplished through private contractual arrangements. The efficacy of voluntary closures and bycatch reduction measures must be reported to the Council annually.

While the annual reports suggest that the VRHS ICA has reduced Chinook salmon bycatch rates compared to what they would have been without the ICA, the highest historical Chinook salmon bycatch occurred in 2007, when the ICA was in effect under an exempted fishing permit. This high level of bycatch illustrated that, while the management measures implemented under Amendment 84 provided the pollock fleet with tools to reduce salmon bycatch, these measures contain no effective upper limit on the amount of salmon bycatch that could occur in the Bering Sea pollock fishery.

Bering Sea Chinook Salmon Bycatch Management

This final rule implements the provisions of Amendment 91, as approved by NMFS. The preamble to the proposed rule (75 FR 14016; March 23, 2010) provides a full description of the provisions implemented with this final rule and the justification for them. In summary, this final rule establishes two Chinook salmon PSC limits (60,000 Chinook salmon and 47,591 Chinook salmon) for the Bering Sea pollock fishery. For each PSC limit, NMFS will issue A season and B season Chinook salmon PSC allocations to the catcher/processor sector, the mothership sector, the inshore cooperatives, and the CDQ groups. Chinook salmon allocations remaining from the A season can be used in the B season (“rollover”). Entities can transfer PSC allocations within a season and can also receive transfers of Chinook salmon PSC to cover overages (“post-delivery transfers”).

NMFS will issue transferable allocations of the 60,000 Chinook salmon PSC limit to those sectors that participate in an incentive plan agreement (IPA) and remain in compliance with the performance standard. Sector and cooperative allocations would be reduced if members of the sector or cooperative decided not to participate in an IPA. Vessels and CDQ groups that do not participate in an IPA would fish under a restricted opt-out allocation of Chinook salmon. If a whole sector does not participate in an IPA, all members of that sector would fish under the opt-out allocation.

The IPA component is an innovative approach for fishery participants to design industry agreements with incentives for each vessel to avoid Chinook salmon bycatch at all times and thus reduce bycatch below the PSC limits. This final rule establishes performance-based requirements for the IPAs. To ensure participants develop effective IPAs, this final rule requires that participants submit annual reports to the Council that evaluate whether the IPA is effective at providing incentives for vessels to avoid Chinook salmon at all times while fishing for pollock.

The sector-level performance standard ensures that the IPA is effective and that sectors cannot fully harvest the Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. Each year, each sector will be issued an annual threshold amount that represents that sector’s portion of 47,591 Chinook salmon. For a sector to continue to receive Chinook salmon

PSC allocations under the 60,000 Chinook salmon PSC limit, that sector must not exceed its annual threshold amount 3 times within 7 consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit.

NMFS will issue transferable allocations of the 47,591 Chinook salmon PSC limit to all sectors, cooperatives, and CDQ groups if no IPA is approved, or to the sectors that exceed the performance standard.

Transferability of PSC allocations is expected to mitigate the variation in the encounter rates of Chinook salmon bycatch among sectors, CDQ groups, and cooperatives in a given season by allowing eligible participants to obtain a larger portion of the PSC limit in order to harvest their pollock allocation or to transfer surplus allocation to other entities. When a PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group would have to stop fishing for pollock for the remainder of the season even if its pollock allocation had not been fully harvested.

This final rule also removes from regulations the 29,000 Chinook salmon PSC limit in the Bering Sea, the Chinook Salmon Savings Areas in the Bering Sea, exemption from Chinook Salmon Savings Area closures for participants in the VRHS ICA, and Chinook salmon as a component of the VRHS ICA. This final rule does not change any regulations affecting the management of Chinook salmon in the Aleutian Islands or non-Chinook salmon in the BSAI. The Council is currently considering a separate action to modify the non-Chinook salmon management measures to minimize non-Chinook salmon bycatch.

Summary of Regulation Changes in Response to Public Comments

This section provides a summary of the substantive changes made to the final rule in response to public comments. Section 304(b)(3) of the Magnuson-Stevens Act requires NMFS to consult with the Council before making any revisions to proposed regulations and to publish in the **Federal Register** an explanation of any differences between proposed and final regulations. At its June 2010 meeting, NMFS consulted with the Council on the revisions to the proposed rule to improve the implementing regulations and respond to public comments. All of the specific regulation changes, and the reasons for making these changes, are contained under Response to Comments, below.

Recordkeeping and Reporting

NMFS changed the time limit in the final rule for operators of catcher/processors, catcher vessels delivering to motherships, and motherships to record the CDQ group number in the paper or electronic logbooks to within 2 hours after completion of weighing on the scale all catch in the haul. NMFS is preparing a separate proposed rule to revise and standardize reporting time limits to address the time limit for recording scale weights of each haul and other required information because these requirements affect more vessels than those regulated under Amendment 91. These additional revisions are expected to be effective by January, 2011.

Bering Sea Pollock Offload Monitoring

NMFS modified the final rule to (1) allow a catcher vessel to begin a new trip before the salmon census and sampling are complete from the vessel's prior trip and (2) clarify that a shoreside or stationary processor must give the observer the opportunity to complete the count of salmon and collect biological samples before sorting a new pollock offload. In 2011, NMFS' observer sampling policy and observer duties for the Bering Sea pollock fishery will be modified for monitoring offloads at shoreside processors and stationary floating processors. The plant observer on duty will be tasked with monitoring each offload for proper salmon sorting, verifying the count of salmon, and collecting biological samples and scientific data.

Catch Monitoring and Control Plan (CMCP) Requirements

NMFS has modified the final rule to clarify that the observation area and the observer work station may be located in separate areas, while also requiring the observer work station be adjacent to the location where the observer counts all salmon and collects scientific data or biological information. NMFS also modified the final rule to require that all salmon be stored in a "salmon storage container." The observation area must now provide a clear, unobstructed view of the salmon storage container to ensure no salmon of any species are removed without the observer's knowledge. NMFS made these changes to the final rule to give processors more flexibility to achieve the goals of allowing an observer to monitor all the sorting of salmon as well as verify the count of the salmon.

Adjustments to the Performance Standard's Annual Threshold Amount

NMFS changed the final rule to subtract a vessel's opt-out allocation from a sector's annual threshold amount in a method similar to the Council's recommended method for determining the sector allocation under the 60,000 Chinook salmon PSC limit.

Entities for the Catcher/Processor and Mothership Sectors

To improve the implementation of sector entities, NMFS modified the final rule to clarify that: (1) NMFS will authorize only one entity to represent the catcher/processor sector and only one entity to represent mothership sector; (2) under the 60,000 Chinook salmon PSC limit, the entity for each sector has to represent all IPA participating vessel owners in that sector; and (3) vessel owners in the catcher/processor sector and mothership sector must be a member of the sector entity to join an IPA. NMFS changed the deadline for the entity application from November 1 to October 1, to coincide with the deadline for the IPA application, and added a December 1 deadline for the entity representative to make changes to the vessels that are members of the entity. NMFS also changed the regulations to clarify that an entity representative may sign more than one IPA on behalf of the vessel owners participating in that IPA.

Joint and Several Liability

NMFS removed joint and several liability provisions for cooperatives and the entities representing the catcher/processor sector and mothership sector. In the proposed rule, these provisions created some confusion and they are unnecessary because NOAA has independent authority to exercise its discretion to seek to impose joint liability if the evidence supports doing so.

Post-Delivery Transfers

NMFS changed the final rule to clarify that a vessel is prohibited from fishing for an entity that has exceeded its Chinook salmon PSC allocation.

Incentive Plan Agreements

NMFS changed the final rule to: (1) Modify the minimum participation requirement for an IPA to clarify that parties to an IPA must collectively represent at least 9 percent of the Bering Sea pollock quota; (2) modify the IPA requirement to better reflect the Council motion that says that an IPA must describe incentives for each vessel to avoid Chinook salmon bycatch under any condition of pollock and Chinook

salmon abundance in all years; (3) change the deadline for amendments to the IPA list of participants from November 1 to December 1 to provide vessel owners more time to join an IPA; and (4) clarify the regulatory language for an amendment to an IPA.

To clarify a CDQ group's participation in one or more approved IPAs, NMFS added a requirement in the final rule that, for a CDQ group to be a member of an IPA, the CDQ group must list each vessel harvesting pollock CDQ on behalf of that CDQ group in the IPA.

Electronic Monitoring

NMFS removed the proposed rule's requirement that the video monitor display the "activities within the tank," and clarified in the final rule that the purpose of the video monitor is to enable the observer to view any area where crew could sort salmon and view the salmon contained in the storage container. Also, for clarity and consistency, NMFS revised the final rule to allow NMFS staff or other authorized personnel, including observers, the ability to view any video footage from earlier in the trip.

Tables 47a, 47b, 47c, and 47d to Part 679

In the final rule, NMFS changed column G in Tables 47a, 47b, and 47c and column E in Table 47d to show each vessel's annual amount of Chinook salmon for the opt-out allocation that will be deducted from the sector's annual threshold amount for the performance standard if a vessel opts-out of an IPA. NMFS also modified the percent of the inshore sector's pollock allocation in column D of Table 47c to include four decimal places.

Additional Changes From the Proposed Rule

NMFS made the following changes from the proposed rule to the final rule to clarify regulatory language or correct mistakes in the proposed rule.

AFA Preliminary Report

In the final rule, NMFS corrects the proposed language at § 679.61(f)(1) to retain the requirement for a preliminary AFA cooperative report. The proposed rule anticipated the publication of another rule that would have provided notice and an opportunity for public comment to remove this AFA reporting requirement. Until such a process is completed, NMFS cannot remove the regulations requiring a preliminary report at § 679.61(f)(1). Retaining the preliminary report does not change the information collection burden on AFA cooperatives; however, the final rule still changes the submission deadline for the final annual AFA cooperative reports from February 1 to April 1 to coincide with the deadlines for a new Chinook salmon IPA annual report and the non-Chinook salmon ICA annual report. Having the same deadline for all three of these reports allows the Council to discuss any of these annual reports at one time during its April Council meeting. At its June 2010 meeting, the Council recommended that NMFS pursue a proposed rule to remove the regulations requiring a preliminary AFA report.

AI Chinook Salmon Allocation for the CDQ Program

NMFS corrected the proposed rule to retain allocations of the trawl gear PSC limits to the CDQ Program as a prohibited species quota (PSQ) reserve. The proposed rule, at § 679.21(e)(3)(i)(A)(3)(i), inadvertently eliminated the 7.5 percent apportionment of the PSC limit for AI Chinook salmon set forth in paragraph (e)(1)(viii). This correction is necessary to ensure that CDQ participants will be subject to the AI salmon area closure based on the PSC limit established for the CDQ sector by Amendment 82 to the BSAI FMP (70 FR 9856, March 1, 2005).

Response to Comments

Observer Issues

Comment 1: This action proposes two positive management actions: increasing observer coverage to 100 percent and implementing the census approach to catch accounting.

Response: NMFS agrees with this comment. This final rule will improve the collection of Chinook salmon information by increasing observer coverage to 100 percent for all vessels and shoreside processing facilities, and by requiring a census of Chinook salmon in every haul or fishing trip.

Comment 2: The majority of Alaskans depend on fish to feed themselves. Yet salmon bycatch in the pollock fishery is uncertain and unregulated. Solving this mystery starts with observing the pollock fishery and international fishing boats.

Response: Amendment 91 regulates Chinook salmon bycatch in the Bering Sea pollock fishery and will minimize Chinook salmon bycatch to the extent practicable. Additionally, with the regulations implementing Amendment 91, NMFS will increase observer coverage for all vessels and shoreside processing facilities, and require a census of Chinook salmon in every haul or fishing trip. This will greatly improve our information on Chinook salmon bycatch in the pollock fishery.

International fishing boats are prevented from fishing in the U.S. exclusive economic zone, and observing vessels fishing in international waters is outside the scope of this action.

Comment 3: Under Amendment 91, observers on catcher vessels would be performing a monitoring and compliance role. While we agree that it is not necessary to require an observer with a level-two endorsement for catcher vessels delivering to inshore plants, we do not recommend specifying observer training level in the regulations. Doing so could restrict future flexibility if the observer's role should change to accommodate other needs.

Response: NMFS agrees and does not specify the observer training levels for observers on catcher vessels in this final rule. Species identification and sampling methodologies for the shoreside observers are covered during the three week training course that all certified observers receive. Observers with a level-two endorsement, as defined at § 679.50(j)(1)(v)(D), are trained in at-sea sample station requirements, at-sea motion compensated scale testing, and observer duties under the CDQ Program. Training for level-two observers does not include new duties for shoreside vessel and plant observers under Amendment 91.

Comment 4: The inshore sector represents approximately 76 percent of the pollock catcher vessels, assuming that each mothership services eight harvesting vessels. The vast majority of catcher vessels have had extremely lax observer coverage for several years. Over a dozen crew members of the inshore fleet have commented that over the last decade the salmon bycatch is under-reported by an average of 40 percent (range of under-reporting was stated as between 20 and 70 percent).

Response: Under this final rule, every catcher vessel in the inshore sector will have an observer onboard at all times. This is an increase in observer coverage for catcher vessels less than 125 feet length overall (LOA). Additionally, every salmon caught by each vessel in the Bering Sea pollock fishery will be counted.

Comment 5: The monitoring and enforcement measures in the proposed rule ensure that the appropriate conservation and management measures are adequately applied to Chinook salmon bycatch.

Response: NMFS agrees. This final rule will improve the collection of Chinook salmon information by increasing observer coverage for vessels

and shoreside processing facilities, by requiring a census of Chinook salmon in every haul or fishing trip, by requiring video monitoring to assist observers aboard catcher/processors and motherships, and by implementing electronic reporting by haul or delivery.

Comment 6: A third plant observer should not be considered as part of Amendment 91 and is not necessary because the two full-time observers currently available at each inshore plant plus the vessel observer provide more than adequate coverage.

Response: NMFS agrees and neither the proposed rule nor the final rule require a third plant observer. Under the final rule, one plant observer is on duty for each delivery with the assistance of the vessel observer. Together, two observers can meet the assigned duties of monitoring proper sorting of salmon, verifying salmon counts, and collecting scientific data and biological samples. Shoreside processors may voluntarily obtain a third plant observer. However, the duties of a third observer would be no different than those currently required of plant observers.

Comment 7: The proposed rule inaccurately assumes that observers can add salmon census duties to their other responsibilities and still accomplish their other work. Currently, observers are assigned a variety of data collection projects that support scientists and managers. To accomplish the goals of the proposed census system, an additional person dedicated to the oversight of salmon sorting may be necessary. Otherwise, the observer is dedicated to Amendment 91 responsibilities, and other data collection would have to be greatly reduced or eliminated altogether.

Response: NMFS recognizes that observer duties may need to change to allow observers to complete salmon monitoring as outlined in this final rule. The Fisheries Monitoring and Analysis (FMA) Division of the Alaska Fisheries Science Center makes policy decisions about the tasks an observer performs, informed by regulation and management necessity. As is customary for each new regulation and calendar year, the FMA Division may require duties performed in 2010 be added or removed for 2011. Under the FMA Division observer sampling policy for 2011, observer duties will be adjusted to allow for the monitoring of pollock offloads at shoreside processors and stationary floating processors. The FMA Division determines the specific observer duties necessary to ensure the proper data is collected while recognizing the limitations on the observer's time and energy.

Observers aboard catcher/processors and motherships will still complete their normal sampling duties. Observers have routinely reported the number of salmon collected during a haul. The responsibility for ensuring that all salmon are removed from the catch and counted will fall upon the vessel with the observer providing third party verification. The use of electronic monitoring systems will supplement the observer's ability to monitor proper sorting and ensure that no salmon are removed from the storage container until an observer has had the opportunity to verify the count and collect scientific data and biological samples on a haul by haul basis.

Comment 8: The proposed rule is written such that the burden of ensuring that all salmon are collected, enumerated, and identified to species appears to fall on the observer. A census can be accomplished, but it requires shifting the responsibility for sorting and identifying salmon bycatch from the observer to the vessel and processing plant crews. The regulations should require the vessel or processing plant crew to sort all salmon and separate salmon by species. Observers should only be responsible for independently tallying the salmon and verifying species, gathering biological samples, and transmitting data as directed by NMFS. Furthermore, placing such onus on the vessel or processing plant crew would allow for fewer disruptions to fishing operations.

This system already exists under § 679.21(c), prohibited species bycatch management, and through the observers sampling protocols established by the FMA Division. The regulations at § 679.21(c) direct vessels to sort all salmon bycatch into bins and separate by haul until the number of salmon can be determined by the observer. Observers estimate these salmon counts are approximately 95 percent accurate.

Response: NMFS disagrees that the regulations place the burden on the observer to ensure that all salmon are collected, enumerated, and identified to species. The observer provides third party verification and reports salmon bycatch. The FMA Division has historically tasked observers to collect information that sometimes parallels industry reporting requirements; this role remains the same under this final rule.

For the inshore sector, the final rule, at § 679.21(c)(2)(i) and (iii), is clear that the responsibility for ensuring all salmon are sorted, stored, and accounted properly falls upon the vessel operator or shoreside processor. Additionally, § 679.5(e)(5)(i)(C)(*3*) requires shoreside processors and stationary floating processors to report salmon numbers by species for each landing. The final rule, at § 679.5(f)(1)(vii), requires all catcher/processors and motherships to report the salmon numbers by species for each haul.

Comment 9: NMFS should consider the 100 percent observer requirement on the previously unobserved segment of the pollock fleet as an opportunity to research claims by other unobserved sectors with similarly configured vessels regarding cost, practicality, and convenience.

Response: The AFA catcher vessels that will be subject to increased observer coverage under this final rule are not members of a previously unobserved segment of the pollock fleet. All of the vessels that will be subject to 100 percent observer coverage currently are subject to 30 percent observer coverage, so they already carry observers during part of the year. Therefore, NMFS already has information about the costs, practicality, and convenience of carrying observers on these vessels. NMFS needs information about cost and practicality of carrying observers on vessels less than 60 feet LOA that are not required to carry any observers under current regulations. However, there are no active fishing vessels of this size class in the Bering Sea pollock fishery.

Comment 10: The proposed rule would stop all sorting and processing when the observer cannot be present. This inaccurately assumes that the observer is present during all sorting periods. Observers on at-sea processors must complete a myriad of activities that may require them to move to other parts of the vessel. Similarly, on some catcher vessels hauls are sorted on a level below the trawl deck; therefore, crew can be on deck dumping the bag, while the observer is below sorting the catch. Observers are also required to take breaks.

Response: NMFS disagrees that the regulations would stop all sorting and processing when the observer cannot be present, and has made no changes to the final rule in response to this comment. Although the observer must verify that a census of all salmon is conducted, observers aboard catcher/processors and motherships are not required to conduct the census. Under the final rule, at § 679.21(c)(2)(i), the vessel operator is responsible for ensuring that all salmon are sorted, stored, and counted by species. Therefore, the regulations do not require that sorting and processing must halt if an observer is not present or is completing other duties. Instead,

the final rule, at § 679.28(j), requires an electronic monitoring system to enable observers to review sorting they may have not been able to witness. Sorting is required to stop only if the salmon storage container is full; see § 679.21(c)(2)(i)(B). This will allow the observer to clearly delineate salmon that have been sampled from those that have not been sampled and counted.

For catcher vessels, no salmon may be removed or discarded at sea and all salmon must be delivered to a shoreside processor; see § 679.7(d)(7)(E) and § 679.21(c)(2)(ii)(B). Additionally, catcher vessels that have the ability to sort below deck do not have many opportunities to sort out salmon while the codend is being dumped. NMFS acknowledges that there may be a small opportunity to remove salmon while the codend is being dumped; however, these vessels would be in violation of the requirement to retain all salmon.

Comment 11: The final rule should require vessels to assign and maintain a salmon sorter at the sorting belt throughout the processing of a haul. Such a salmon sorter should also be required to identify and sort salmon by species into designated bins that can be easily monitored by the observer.

Response: The final rule, at § 679.21(c)(3), requires the operators of vessels and the managers of shoreside or stationary floating processors to designate, and identify to the observer, a crew person or employee responsible for ensuring all sorting, retention, and storage of salmon occurs in accordance with the regulations at § 679.21(c)(2). However, the regulations do not require vessel operators and shoreside or stationary floating processor managers to sort salmon by species. Due to the variety of vessel and shoreside configurations, adding the necessary space required for sorting salmon by species may be impractical for some operations. Vessel operators or processors may choose to separate salmon by species in order to expedite the verification of the salmon count and the collection of biological samples or scientific data.

Comment 12: Vessel operators participating in an IPA are responsible to track their own salmon counts throughout each season. Therefore, it is unnecessary to structure regulations regarding the observation and count of salmon that are directly tied to the vessel observer.

Response: NMFS agrees that vessel operators, cooperative managers, and managers of shoreside processing facilities are responsible for ensuring proper sorting, counting, and identification of salmon. However, NMFS disagrees that it is unnecessary to structure regulations regarding the observation and count of salmon that are directly tied to the vessel observer. Observations reported by the NMFS observers will serve as independent third party information to verify whether the counts and identification of salmon reported by industry are correct and accurate. Regulations are necessary to ensure the observer has unobstructed access to these fish in such a way that the data can be reliably collected and reported.

Comment 13: The proposed rule, at § 679.7(k)(8)(iii), prohibits the operator of a catcher vessel from starting a new fishing trip for pollock in the Bering Sea if the observer assigned to the catcher vessel for the next fishing trip has not completed counting the salmon and collecting scientific data or biological samples from the previous delivery by that vessel. Similarly, § 679.21(c)(2)(ii)(C) requires that before the vessel can begin a new fishing trip, the observer assigned to that vessel for the next fishing trip must be given the opportunity to complete the count of salmon and collect scientific data or biological samples from the previous delivery. These provisions contradict language in the preamble (pages 14029 and 14030) that a vessel may begin a new trip before the salmon census and sampling are complete for the vessel's prior trip so long as the vessel leaves with a different observer than it carried on the prior trip.

These provisions are overly prescriptive, would increase costs to participants while reducing flexibility, and would require contractors to maintain a large pool of observers onshore to ensure that catcher vessels could start a new fishing trip prior to the observer completing their duties. And, it should not be the responsibility of the observer assigned to the catcher vessel for the next trip to collect the data from the previous trip. These responsibilities should be shared by the vessel and plant observers. The final rule should require only that no catcher vessel may start a new fishing trip unless it has an observer onboard. Which observer the vessel carries and whether a vessel or plant observer completes the salmon census and all sampling for a prior delivery should not matter. In light of additional observer coverage and changing duties involved in Chinook salmon bycatch accounting, a more flexible approach to duty assignment is necessary.

Response: NMFS agrees and for the reasons set forth by the commenter, it has modified the final rule to (1) allow a catcher vessel to begin a new trip before the salmon census and sampling are complete from the vessel's prior trip, and (2) clarify that a shoreside or stationary processor must give the observer the opportunity to complete the count of salmon and collect biological samples before sorting a new pollock offload.

NMFS removed the restriction on a vessel's ability to begin a new trip, at § 679.21(c)(2)(ii)(C) of the proposed rule. Instead, NMFS revised the prohibition at § 679.7(d)(8)(ii)(C)(*6*) to clarify that a shoreside or stationary floating processor cannot begin sorting a pollock CDQ offload before the observer has completed the count of salmon and the collection of scientific data or biological samples. Similarly, NMFS revised § 679.7(k)(8)(iii) to prohibit shoreside processors and stationary floating processors from sorting the next pollock offload until the observer has completed duties related to a previous pollock offload. Moreover, NMFS added § 679.21(c)(2)(iii)(F) to the final rule to prevent a shoreside or stationary floating processor from beginning the next pollock offload until the observer has notified the plant operator that opportunity has been provided to complete the count of salmon and collect scientific data or biological samples.

Comment 14: The proposed rule, at § 679.21(c)(2)(iii)(D), requires that the vessel offload and sorting must cease in the event salmon are too numerous to be contained in the observation area and the observer must be given the opportunity to count the salmon in the observation area and collect scientific data or biological samples. In addition, the proposed rule, at § 679.28(g)(7)(vii)(F), requires that the observation area must contain an area designated to store salmon. However, there may not be enough room to contain all salmon within sight of the observer at all times. The final rule should allow the salmon to be removed, in the presence of the observer, once salmon have been counted and sampled. Moreover, vessels should be allowed to resume offloading and sorting as soon as space becomes available in the observation area.

Response: NMFS agrees and has revised the final rule to clarify that, at any point during the offload, if salmon are too numerous to be contained in the salmon storage container, the sorting of the offload must cease and the observer must be allowed to count all the salmon and collect scientific data and biological samples adjacent to the observer work station. Once these duties have been completed, the salmon may be removed

in the presence of the observer and the sorting of the offload may continue.

NMFS made the following changes in the final rule to give processors more flexibility to achieve the goals of allowing an observer to monitor all the sorting of salmon and verify the count of salmon. These changes are necessary because processing facilities vary greatly in the methods used to sort and weigh fish.

In response to comments that the observation area may not provide enough space to hold the salmon storage area, NMFS revised the final rule at § 679.21(c)(2)(iii)(C), (D), and (E) by removing the requirement to store and count salmon in the observation area. Instead, the final rule requires salmon to be stored in a "salmon storage container." No additional revisions are needed because the final rule, at § 679.21(c)(2)(iii)(D), allows shoreside processors or stationary processors to remove the salmon from the storage container if the salmon become too numerous to contain in this location.

NMFS added a requirement, at § 679.28(g)(7)(vi)(C), that the observation area must provide a clear, unobstructed view of the salmon storage container to ensure no salmon of any species are removed without the observer's knowledge.

NMFS revised paragraph § 679.28(g)(7)(vii) to allow for the observation area and the observer work station to be in separate locations, while also requiring the observer work station be adjacent to the location where the observer counts all salmon and collects scientific data or biological information.

Last, NMFS revised the regulations at § 679.28(g)(7)(x)(F) to clarify that the CMCP requirement to include the location of the salmon storage container is only for shoreside or stationary floating processors taking pollock deliveries.

Comment 15: Revise sections § 679.21(c)(2)(iii)(D) and (E) to refer to "an observer" rather than "the observer." Using "the observer" implies that the required functions would always be done by the catcher vessel observer, which is illogical because an offload could take up to 24 hours. Using "an observer" would add flexibility for program participants and more accurately reflect the current shared responsibilities of vessel and plant observers when a catcher vessel delivers to a shoreside or stationary floating processor.

Response: NMFS disagrees and has made no changes to the final rule in response to this comment. The final rule, at § 679.21(c)(2)(iii)(D) and (E), uses the phrase "the observer" to refer to either the plant or the vessel observer, and does not designate which observer will be tasked with monitoring the offload. No changes are required to the regulations because either observer may perform these duties.

The FMA Division makes policy decisions about the tasks an observer performs. In the past, vessel observers monitored offloads of shoreside pollock deliveries. Beginning in 2011, observer program policy will place the primary responsibility for monitoring the proper sorting of salmon, verifying the count of salmon, and collecting scientific data and biological samples upon the observers stationed at the processing facility. The vessel observer may provide the plant observer breaks or other assistance as needed during the offload.

Comment 16: The proposed rule, at § 679.21(c)(2)(i)(D) and § 679.21(c)(2)(iii)(B), requires that that no salmon pass the observer sample collection point, or no salmon pass from the last point where sorting of fish occurs into the factory area of a processing plant. These requirements are unreasonable as it is inevitable that salmon occasionally pass beyond the sorting area because salmon can be difficult to identify in the large volume of pollock. This could occur even when every effort is made to identify and separate salmon out at the observer sample collection point and/or sorting area. Rather than penalize a plant operator, the regulations should provide the flexibility for salmon identified at any point in the process to be counted and sampled without penalty.

Response: NMFS disagrees and has made no changes to the final rule in response to this comment. As identified in the EIS on page 65, Chinook salmon PSC allocations may create strong economic incentives to misreport salmon bycatch because each salmon counted against Chinook salmon PSC allocation could ultimately constrain the full harvest of a sector's, cooperative's, or CDQ group's pollock allocation. The factory areas of processing plants are large and complex. Preventing observers from seeing Chinook salmon that enter the factory would not be difficult. In order for PSC limits to be effective, NMFS needs to ensure that there is a credible salmon bycatch monitoring system in place at shoreside processing plants. This would ensure that observers have access to all salmon, prior to the fish being conveyed into the factory. NMFS acknowledges that the reduction in the flow of fish through the initial catch sorting area could slow pollock processing, since fish would enter the factory at a slower rate. Additional sorting crew may also be needed in the catch sorting area during times when salmon bycatch is high or small salmon are present.

Recordkeeping and Reporting

Comment 17: Current regulations require operators of trawl catcher/processors to record the scale weight for the haul and the CDQ group number within 2 hours after completion of gear retrieval. However, it is unlikely that all of the catch from a haul will be weighed within 2 hours of gear retrieval. Pollock often are held in tanks before weighing and processing for hours after the gear is retrieved. In addition, vessel operators and CDQ group representatives want to know the weight of the haul and the number of Chinook salmon in the haul before deciding whether to assign the haul to the CDQ group. The time limit for recording scale weight and CDQ group number should be changed to within 2 hours after the completion of weighing of the catch from the haul. This solution provides adequate time for the crew to safely move the fish across the scale without putting unnecessary pressure on the observer to monitor the haul and complete their other duties faster than they reasonably can. It also ensures that the vessel operator enters the haul data with minimal delay for the benefit of other vessels in their sector that depend on that data to avoid hot spots and to manage under the PSC allocation and performance standard.

Response: NMFS agrees and has modified the final rule, at § 679.5, to change the time limit for recording the CDQ group number in the logbooks, for the reasons described in the comment.

Proper accounting of pollock catch and salmon bycatch to an AFA sector, inshore cooperative, or CDQ group requires identification of whether a haul by a catcher/processor or a delivery by a catcher vessel to either a mothership, shoreside processor, or stationary floating processor is assigned to a specific CDQ group. If no CDQ group is identified with the haul or delivery, that pollock, associated salmon bycatch, and other catch in the haul or delivery is attributed to the sector or inshore cooperative to which the vessel or processor belongs. For catcher/processors and motherships, observer data is used to determine the weight of pollock and number of salmon associated with the haul or delivery, and the CDQ group number must be properly identified in the observer data at the time the data is transmitted by the observer from the vessel to NMFS. The primary and official source of the CDQ group number for the observer is the

vessel logbook. Observers also record and transmit the total weight of each haul or delivery from the scale onboard the vessel. Although the scale weight of each haul or delivery also is required to be recorded in the vessel logbook, observers can obtain this information directly from the scale and do not need to rely on the vessel logbooks as the only source of data for scale weights.

Under current regulations, operators of catcher vessels and catcher/processors using any gear type and the operators of motherships are required to record the CDQ group number in their logbooks within 2 hours after the completion of gear retrieval. This requirement has existed for logbooks for many years so that vessel operators can document whether catch in a haul or set is occurring in CDQ or non-CDQ fisheries. The primary reasons for requiring the vessel operators to indicate in their logbooks that they were fishing on behalf of a CDQ group are: (1) To document why a vessel may be directed fishing for a groundfish species when the non-CDQ fisheries for that species were closed; (2) to record production and retained catch separately in the CDQ and non-CDQ fisheries for purposes of calculating maximum retainable amounts of groundfish not open for directed fishing; and (3) to provide information for proper accounting of catch to allocated quotas.

The requirement to record both the scale weight of the haul and the CDQ group number within 2 hours of completion of gear retrieval applies to daily cumulative production logbooks (DCPLs) for catcher/processors using trawl gear under regulations at § 679.5(c)(4)(ii)(B). However, as described in the proposed rule, under Amendment 91 AFA catcher/processors or any catcher/processor harvesting pollock CDQ will no longer be filling out DCPLs (the paper logbooks). Vessel operators are required to record all information previously required in the DCPL in an electronic logbook (ELB). This final rule adds text to the introductory paragraph of the trawl catcher/processor DCPL requirements to clarify that the operators of AFA catcher/processors or any catcher/processor harvesting pollock CDQ are required to use an ELB and no longer report using a DCPL.

Regulations at § 679.5(f)(2)(iii)(B)(*1*) require that vessel operators using an ELB must "Record the haul number or set number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable), and hail weight for each haul or set within 2 hours after completion of gear retrieval." Hail weight is the vessel operator's estimate of the total weight of the haul. Although current ELB regulations require the vessel operator to enter all data currently required for the DCPLs, the ELB time limits currently do not include the same requirement that applies to the DCPL that operators of catcher/processors required to weigh catch on a scale approved by NMFS must record the scale weight of the haul. In addition, although the ELB time limits list the information that must be recorded within 2 hours after completion of gear retrieval, they do not include the additional DCPL time limit to record all other required information by noon of the day following completion of production. NMFS revised the final rule to require operators of catcher/processors to report, in the ELBs, the CDQ group number within 2 hours after completion of weighing all of the catch in the haul on the scale.

NMFS is preparing a separate proposed rule to revise and standardize time limits in § 679.5 for daily fishing logbooks (DFLs), DCPLs, and ELBs and will address the time limit for recording the scale weight of each haul and all other required information in this separate rulemaking because these requirements affect more than the vessels regulated under Amendment 91. This separate rulemaking is expected to be effective by January 1, 2011. However, until these revisions are made, operators of catcher/processors fishing under Amendment 91 are not required to record scale weights of each haul in the ELB within 2 hours of completion of gear retrieval.

NMFS changed the final rule to add a requirement that the operator of the vessel must provide the information recorded in the ELB to the observer or an authorized officer upon request at any time after the specified deadlines and before the ELB logsheet is printed. This requirement is needed because the CDQ group number is required to be recorded in the ELB within 2 hours after weighing of the catch, but the vessel operator is only required to print a copy of the ELB logsheet for the observer's use by noon each day to record the previous day's ELB information. The observer may need access to the information about the CDQ group number recorded in the ELB prior to the daily printing of the ELB logsheet page to submit observer data to NMFS in a timely manner. As stated in the comment, timely submission of observer data will be essential to the industry to manage Chinook salmon bycatch under Amendment 91.

The same issue raised in this comment about the time needed to assess catch composition before assigning the catch in the haul to a CDQ group or the partner vessel also applies to catcher vessels delivering to motherships. Current regulations at § 679.5(c)(4)(ii)(A) require the operator of a catcher vessel using trawl gear to record the CDQ group number in its DFL within 2 hours after completion of gear retrieval. Catcher vessels delivering unsorted codends do not retrieve gear onboard the catcher vessel, but just transfer the codend from the catcher vessel to the mothership. The trawl net is hauled onboard the mothership, dumped into holding tanks and held, sorted, weighed, and processed in much the same manner as is done on a catcher/processor. Therefore, assessment of the composition of the catch and obtaining information needed by the vessel operator to assign the catch to a CDQ group or the mothership sector is not available until after the catch is weighed and the salmon sorted, identified, and counted on the mothership.

To maintain consistency with the revisions made for time limits that apply to the catcher/processors, NMFS also revised the final rule that governs time limits for recording the CDQ group number in the catcher vessel's DFL and the mothership's DCPL. NMFS revised the final rule, at § 679.5(c)(4)(ii)(A)(*1*), to add the statement that specific information must be recorded within 2 hours after completion of gear retrieval, except that catcher vessels harvesting pollock CDQ and delivering unsorted codends to a mothership must record CDQ group number within 2 hours after completion of weighing all catch in the haul on the mothership.

For the mothership DCPL, NMFS revised the final rule, at § 679.5(c)(6)(ii)(A), to add the statement that specific information must be recorded within 2 hours after completion of receipt of each groundfish delivery, except that the CDQ group number for catcher vessels harvesting pollock CDQ and delivering unsorted codends to a mothership must be recorded within 2 hours after the completion of weighing all catch from the haul on the mothership. Mothership operators may use either the DCPL or ELB. Mothership DCPLs do not require reporting of the scale weight of each delivery, so no revisions are needed.

Finally, current regulations require that the operator of a vessel using an ELB must notify NMFS by fax that he or she will be using an ELB. NMFS modified the final rule so that this requirement applies only to operators

voluntarily using an ELB. AFA catcher/processors required to use an ELB under Amendment 91 will not be required to notify NMFS by fax that they are using an ELB because NMFS will know that they are using an ELB.

Comment 18: The final rule should revise the time limit to record scale weight of the haul and CDQ group number to within 2 hours after the catch from a haul is weighed and the salmon in the haul are counted, whichever occurs later. This deadline would better comport with fish processing operations and the practical requirements for storing pollock in holding tanks.

Response: NMFS agrees that the time limit for recording whether the catch from a haul by a catcher/processor is attributed to a CDQ group should be changed. See response to comment 17. The final rule revises this time limit to within 2 hours of the completion of weighing all catch in the haul. NMFS believes that the time limit is appropriately linked to the completion of weighing of the haul and does not agree that the time limit should be linked to when the observer has completed counting the salmon in the haul.

Two hours after weighing the catch in the haul should provide sufficient time for the observer to sort, identify species, and count all of the salmon in a haul. However, if unusual circumstances prevent the observer from completing the count of all salmon in the haul within this time limit, vessel crew can assist the observer or count the salmon in the haul independent of the observer with enough detail to assess the catch composition from the haul for purposes of deciding whether to assign a haul to a CDQ group or to the catcher/processor sector. In addition, the time when the catch from a haul is completely weighed on the scale is readily available to the vessel operator from information stored and printed by the scale. Conversely, the time when an observer completes counting salmon would require separate and additional documentation by the observer.

Comment 19: The proposed rule, at § 679.21(c)(2)(ii)(A), requires an operator of a vessel making inshore deliveries to store all salmon taken as bycatch in a refrigerated saltwater tank. This regulation should be removed because at times catch must be stored on deck if tanks are full, a refrigeration break-down could result in a violation, and certain times of the year water temperatures are sufficiently cold that it is unnecessary to refrigerate.

Response: NMFS did not add this requirement with the proposed rule, we only removed the ability to freeze or ice the salmon. Making the requested change is outside the scope of this action. Vessel operators should notify NOAA Office of Law Enforcement of any equipment failures, including a refrigeration break down, that impedes a vessel's full compliance with regulations.

Comment 20: In the interest of reducing the carbon footprint of the pollock fleet, we support the proposal to remove the reference requiring the discard of salmon into Federal waters once they have been counted or otherwise sampled. However, whenever possible and practical, Chinook salmon bycatch should be committed to the PSD program.

Response: NMFS acknowledges this comment.

PSC Limits and Allocations

Comment 21: A 20,000 to 25,000 Chinook salmon bycatch cap is required for the Chinook salmon population to recover.

Response: As discussed in the EIS (*see* **ADDRESSES**), no available information indicates that caps at the levels recommended in this comment would recover the Chinook salmon population. Annual bycatch caps of 20,000 to 25,000 Chinook salmon were considered and eliminated from further analysis by the Council. Based on recommendations from the Council's Salmon Bycatch Workgroup, the initial hard cap numbers under consideration ranged from 14,000 to 114,000 fish. At the December 2007 Council meeting, the Council raised the lowest hard cap under consideration to 29,323 Chinook salmon, which is representative of the 5-year average prior to 2001. The Council noted that including this number in the analysis was sufficiently conservative and that caps below 29,323 would not meet the purpose and need for this action. The EIS has a complete analysis of the cap level options (*see* **ADDRESSES**).

Comment 22: A hard cap of 29,323 Chinook salmon would ensure salmon returns meet the needs of user groups. A cap at this level is consistent with the (1997 to 2001) average Chinook salmon bycatch and would approach the Yukon River Salmon Agreement requirement that the United States increase in-river returns by reducing losses to marine fisheries. As the EIS describes, a cap at this level would have provided the "greatest benefit" in salmon savings for Western and Interior Alaska stocks from 2003–2007.

Response: NMFS acknowledges the comment and notes that a similar hard cap was considered in the EIS. The Council recommended and NMFS approved Amendment 91 because it best balances the need to minimize Chinook salmon bycatch to the extent practicable while providing the pollock fleet the flexibility to harvest the pollock TAC. This decision is fully supported by the EIS and RIR prepared for this action (*see* **ADDRESSES**). NMFS has complied with all applicable laws, Executive Orders, and international obligations in approving and implementing Amendment 91.

Comment 23: A very strong case was made by directly affected communities, and those organizations whose entire existence is for the purpose of conserving Yukon River Chinook salmon, for implementing a 30,000 Chinook salmon cap with a 58/42 A/B season split.

Response: The analyses for this action examined the impacts of hard caps ranging from 29,300 to 87,500 Chinook salmon. See NMFS response to comment 21. Four seasonal apportionment options were analyzed in the EIS, including the 58/42 apportionment. Amendment 91 apportions the PSC limits as 70 percent in the A season and 30 percent in the B season. Seventy percent is higher than the average historical distribution of Chinook salmon bycatch to the A season to provide more of the Chinook salmon PSC allocation during the highest value pollock fishing season. However, the 70/30 A/B season split is combined with the rollover of 100 percent of the remaining A season allocation to the B season. This rollover provision promotes salmon savings in the A season by providing incentives for sectors to minimize bycatch to the extent practicable in preparation for the B season, but also locks in the maximum proportion of bycatch allowed in the A season.

Comment 24: The 47,591 Chinook salmon PSC limit is too high. Declining Chinook salmon numbers prove that salmon stocks cannot sustain exploitation at that level.

Response: NMFS disagrees. The EIS analyzes the environmental impacts of Chinook salmon bycatch at the 47,591 Chinook salmon PSC limit (*see* **ADDRESSES**). This analysis provides the best available information on the predicted impacts of bycatch at this level. The 47,591 is the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006, and represents both the performance standard for sectors with vessels participating in an IPA and the PSC limit if no IPA is approved by NMFS.

While Chinook salmon bycatch in the pollock fishery may be a contributing factor in the decline of Chinook salmon, as the EIS analysis shows, the absolute

numbers of the ocean bycatch that would have returned to western Alaska are expected to be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook bycatch. Although the reasons for the decline of Chinook salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely cause poor survival of Chinook salmon.

Comment 25: The 60,000 Chinook salmon PSC limit is nearly double the cap levels of 29,323–32,500 Chinook salmon recommended by those who oversee management of the Chinook salmon fisheries in-river and by those who depend on the Chinook salmon. The 60,000 Chinook salmon PSC limit would allow the pollock industry to waste more Chinook salmon than the entire subsistence catch on the Yukon River.

Response: Amendment 91 involves more management measures than a simple 60,000 Chinook salmon PSC limit. The performance standard will ensure that average bycatch does not exceed the recent 10-year average. The IPAs are intended to further reduce bycatch below that amount by providing vessels incentives to avoid Chinook salmon at all times. As a result, Amendment 91 is intended to achieve, on average, greater Chinook salmon savings in low abundance years than a single hard cap and achieve Chinook salmon bycatch below the performance standard in most years. However, the 60,000 Chinook salmon PSC limit provides for the inherent variability in Chinook salmon bycatch among vessels, sectors, and years by allocating sufficient Chinook salmon for times when Chinook salmon bycatch is unavoidably high.

NMFS will monitor all salmon bycatch by each vessel in the pollock fishery through a census, 100 percent observer coverage, and an expanded biological sampling program. Annual reports and the proposed economic data collection program are designed to evaluate whether and how incentive plans influence a vessel's operational decisions to avoid Chinook salmon bycatch. If information becomes available to indicate that Amendment 91 is not providing the expected Chinook salmon savings, NMFS will work with the Council to take additional actions to minimize Chinook salmon bycatch to the extent practicable.

Performance Standard

Comment 26: Under the proposed rule, if a vessel opts-out of an IPA, an amount equal to that vessel's portion of opt-out allocation of 28,496 Chinook salmon is subtracted from that sector's PSC allocation; however, an amount equal to that vessel's portion of 47,591 Chinook salmon is also subtracted from that sector's annual threshold amount. The proposed rule has no rationale for subtracting an opt-out vessel's portion of 47,591 Chinook salmon from the sector's annual threshold amount. This proposed adjustment method will unnecessarily restrict fishing opportunities for vessels that choose to become members of an IPA and will, in turn, jeopardize the attainment of optimum yield in the pollock fishery. The final rule should accommodate the vessels that choose to opt-out of an IPA by subtracting the vessels opt-out allocation from the sector's annual threshold amount.

Response: NMFS consulted with the Council on the two methods to calculate a sector's annual threshold amount, the method in the proposed rule or the method recommended by public comment. The Council recommended that the final rule be changed to subtract a vessel's opt-out allocation from the sector's annual threshold amount. This is the same method that the Council had recommended for calculating the sector allocations under the 60,000 Chinook salmon PSC limit and will result in slightly higher annual threshold amounts for sectors with vessels that opt-out of an IPA than the method in the proposed rule. To make this change, NMFS changed column G in Tables 47a, 47b, and 47c and column E in Table 47d of the final rule to show each vessel's annual Chinook salmon opt-out allocation that will be deducted from the sector's annual threshold amount.

Comment 27: The performance standard allows the pollock fleet to exceed the 60,000 Chinook salmon PSC limit in some years without penalty, although consistently exceeding the performance standard could trigger a lower bycatch cap for future years.

Response: Under Amendment 91, the pollock fleet is prevented from exceeding the 60,000 Chinook salmon PSC limit in every year. Each year, NMFS will allocate the 60,000 Chinook salmon PSC limit to the mothership sector, catcher/processor sector, inshore cooperatives, and CDQ groups if an IPA is formed and approved by NMFS. The sector-level performance standard of 47,591 Chinook salmon is a tool to ensure that each sector does not fully harvest its Chinook salmon PSC allocation in most years. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector may not exceed its portion of 47,591 in any three years within seven consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit.

Comment 28: The performance standard allows the pollock fleet to catch 60,000 Chinook salmon in two out of seven years with no penalty. The rationale cited by the Council was that in certain years the pollock fishery simply cannot avoid bycatch despite behavioral changes. No analysis is presented in the EIS to support this conclusion.

Response: The EIS (*see* **ADDRESSES**) discusses the function of the sector-level performance standard to prevent each sector from exceeding its portion of 47,951 Chinook salmon in more than 3 years in any 7 consecutive years. Note that since the performance standard is on a sector basis, if one sector exceeded its performance standard and fished up to its allocation under the 60,000 PSC limit, total bycatch would still be below 60,000 Chinook salmon. Bycatch would only reach 60,000 Chinook salmon in a given year if all sectors fished up to their allocation of 60,000 Chinook salmon. Therefore, the performance standard is the tool that will prevent bycatch from exceeding, on average, the historical 10-year average.

The EIS analysis shows that the number of Chinook salmon caught as bycatch in the pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a 60,000 Chinook salmon PSC limit, a performance standard, and IPAs. The 60,000 Chinook salmon PSC limit represents a reduction in bycatch from the recent high bycatch years and is approximately one-half of the 2007 Chinook salmon bycatch. The 60,000 Chinook salmon PSC limit assumes that the fleet can and will change behavior to avoid Chinook salmon or face closure the pollock fishery. The performance standard and the IPAs aim to ensure that the fleet will further change behavior to avoid Chinook salmon bycatch.

Eligible Entities

Comment 29: The proposed rule, at § 679.21(f)(8)(ii), is unclear about what would happen if NMFS received more than one application for the entity to represent a sector and receive the Chinook salmon PSC allocation. No more than one entity should be authorized to represent the catcher/processor sector, but not all of the owners of the AFA permitted vessels in the sector should be required to be members in a single entity.

The final rule should contain an explanation of the criteria that NMFS intends to use to determine which of two or more entity applications will be selected to represent the catcher/processor sector. One criterion should be that an applicant must represent the majority (i.e., 75 percent) of the eligible vessel owners in that sector. By using these criteria, NMFS would authorize an entity with the broadest representation of participants. This super-majority threshold will ensure that the terms under which the entity is formed will reflect the views of the strong majority of participants but at the same time will prevent the creation of hold out opportunities that would result from a unanimous approval requirement. The rule should not require unanimous participation by the owners of every eligible vessel. This standard would give inappropriate leverage to participants with very little investment in the fishery and could disrupt the entire allocation and IPA process.

Response: NMFS consulted with the Council on the best way to address the sector entity issues raised in public comment, and the Council recommended that NMFS change the final rule to improve the implementation of sector entities and better align IPA and sector entity participation. The requirement that the mothership and catcher/processor sector entities must represent all of the vessel owners in that sector to receive a transferable PSC allocation was explained in the EIS and is a result of the fact that Amendment 91 only allows for NMFS to make a single allocation to those sectors. However, the proposed rule did not provide the necessary structure for the sector entity to form without introducing the problems identified in public comments.

NMFS modified the final rule, at § 679.21(f)(8)(i)(C) and (D), to make it clear that NMFS will authorize only one entity to represent the catcher/processor sector and one entity to represent the mothership sector. NMFS also clarified that, under the 60,000 Chinook salmon PSC limit, the entity has to represent all IPA participating vessel owners because the allocation is for use by all IPA participating members of the sector, and the entity is responsible for managing the use of the allocation by all IPA participating members. Vessel owners that choose to opt-out of an IPA would not participate in the sector entity. NMFS added a requirement, at § 679.21(f)(8)(ii)(A), that the sector entity representative must affirm on the application form that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. NMFS moved a similar requirement for IPA membership from the proposed language at § 679.21(f)(12)(ii) to the IPA application requirements at § 679.21(f)(12)(iii)(A) to better align the participation requirements for both applications. NMFS also added a requirement, at § 679.21(f)(12)(ii)(B), that vessels owners in the catcher/processor sector or mothership sector must be a member of the sector entity to join an IPA.

To address the issue of what would happen if NMFS received more than one sector entity application, NMFS added § 679.21(f)(8)(ii)(E) to the final rule to clarify that if more than one entity application is submitted to NMFS, NMFS will approve the application for the entity that represents the most eligible vessel owners in the sector. At § 679.21(f)(8)(ii)(D), NMFS changed the deadline for the entity application from November 1 to October 1 to coincide with the deadline for the IPA application. NMFS added § 679.21(f)(8)(ii)(F) to the final rule to enable vessel owners to join an approved sector entity by December 1 of each year, so that the entity can represent all eligible vessels in the sector and receive a transferable PSC allocation.

Comment 30: The proposed rule, at § 679.7(f)(8)(iii)(A)(*4*), allows an entity representative to sign an IPA on behalf of the vessel owners in that entity. The final rule should allow the entity representative to sign more than one IPA to provide for the eventuality that members of the same entity join different IPAs.

Response: NMFS agrees and has modified this paragraph, now at § 679.21(f)(8)(iii)(B) in the final rule, to allow an entity representative to sign more than one IPA. The IPA representative may sign an IPA on behalf of the vessel owners in that entity that intend to join that IPA. Note that the IPA application requires that the IPA list each vessel that will be participating in that IPA.

Comment 31: The joint and several liability provision, at § 679.21(f)(8)(iii)(A), is unreasonably broad and makes the members of an entity formed for the purposes of applying for and holding transferable quotas jointly and severally liable for any violation of applicable regulations and for any penalties. Requiring vessel owners to subject themselves to such onerous and open-ended joint and several liability exposure raises serious issues of fairness and due process. The prospect of such liability is likely to have a chilling effect on the willingness of an individual company to enter into the entity formation arrangements required to enjoy the benefits of a transferable bycatch allocation in the first place. Without an entity, that sector would not receive transferable Chinook salmon PSC allocations, which may jeopardize its ability to harvest its pollock. This is an inappropriate standard that not only unfairly imposes liability on innocent vessel owners, but it was included in the proposed rule without opportunity for comment earlier in the process and without the benefit of Council input. For these reasons, and without benefit of any rationale for including such provisions in the first place, the joint and several liability provisions should be removed for the final rule.

Response: NMFS has removed from the final rule the joint and several liability provisions for cooperatives and the entities representing the catcher/processor sector and mothership sector. These provisions created some confusion, as discussed in the comment, and they are unnecessary because NOAA has independent authority to exercise its discretion to seek to impose joint liability if the evidence supports doing so.

Transfers

Comment 32: The proposed rule, at § 679.21(f)(9)(ii), states that vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new pollock fishing trip for the remainder of that season. This implies that if a vessel was fishing on the pollock allocation from an AFA entity and the entity had exceeded its Chinook salmon PSC limit, the vessel could not start a new fishing trip for a CDQ entity. That is not the intent. Clarify that once an entity has exceeded its Chinook salmon PSC allocation, a vessel cannot start a new fishing trip for that same entity.

Response: NMFS agrees and has modified the final rule at § 679.21(f)(9)(ii) to clarify that a vessel is prohibited from fishing for an entity that has exceeded its Chinook salmon PSC allocation. The Council motion states that any recipient of a post delivery transfer during a season may not fish for the remainder of that season. The recipient of a post delivery transfer is the entity, not a vessel. The prohibitions at § 679.7(d)(8)(ii)(C)(*2*) and (k)(8)(iv)(B) accurately reflect this.

Comment 33: In the proposed rule, at § 679.21(f)(10)(ii), it is difficult to determine whether seasonal pollock fishery closures will affect a sector of the fishery or the entire fishery. The final rule should make it clear that sector-specific seasonal closures will be employed to manage this portion of the fishery.

Response: NMFS disagrees that this paragraph needs to be changed. This regulation makes it clear that NMFS will close fishing for those vessels fishing under a non-transferable allocation. For any given year, NMFS can establish non-transferable allocations, including a non-transferable allocation for the group of opt-out vessels. The non-transferable opt-out allocation will apply to all vessels that have opted out and could include vessels from different sectors. Therefore, the NMFS closures will not necessarily be sector-specific.

Incentive Plan Agreement (IPA)

Comment 34: The proposed rule, at § 679.21(f)(12)(i)(A), incorrectly characterizes the minimum participation requirement. The first sentence should read, "participation by the owners of AFA permitted vessels or CDQ groups that combined represent at least 9 percent of the Bering Sea directed pollock fishery is required for purposes of this paragraph (f)(12)(i)." The accompanying table should be deleted.

Response: NMFS agrees and has corrected this paragraph for the final rule to clarify that parties to an IPA must collectively represent at least 9 percent of the Bering Sea pollock quota. The correct method for determining the percent represented by each party to an IPA is described in detail in the preamble to the proposed rule (75 FR 14028; March 23, 2010).

NMFS disagrees that the accompanying table should be deleted. The table contains necessary information for participants to understand how NMFS will calculate the percent of Bering Sea pollock used for each AFA permitted vessel and CDQ group in determining whether an IPA meets the minimum participation requirement.

Comment 35: The preamble to the proposed rule explains that a CDQ group can only join one IPA. This restriction would force a CDQ group with vessels fishing in different AFA sectors to join one IPA and adopt the same incentive program. A CDQ group has investments in fishing vessels in several pollock sectors, and can allocate CDQ pollock among them, and should have the ability to join multiple IPAs.

Response: NMFS concurs that a CDQ group should not be required to participate in only one approved IPA. CDQ groups are not restricted in what vessels they may authorize to catch pollock CDQ on their behalf as long as those vessels meet all other applicable requirements in 50 CFR part 679 and other Federal regulations. Therefore, a CDQ group may have vessels from different AFA sectors fishing for pollock in the Bering Sea on its behalf. Different AFA sectors may develop different IPAs and the CDQ group or the vessel owner may want the partner vessel to participate in the same IPA that the vessel participates in for its non-CDQ fishing. Although described in the preamble, no regulations were included in the proposed rule that would require the CDQ groups to participate in only one IPA. Therefore, no changes in the final rule are needed.

However, NMFS added a requirement to the final rule to clarify requirements associated with a CDQ group's participation in an IPA. To receive a transferable Chinook salmon PSC allocation under the 60,000 PSC limit, a CDQ group must participate in an approved IPA. If a CDQ group is participating in an IPA, it cannot also participate in the opt-out fishery because the Chinook salmon allocation to a CDQ group cannot be subdivided based on the participation of its partner vessels in an approved IPA. Therefore, to implement the Council's intent and to address this comment submitted by five of the six CDQ groups, NMFS added a requirement in the final rule, at § 679.21(f)(12)(ii)(C), that states, for a CDQ group to be a member of an IPA, the CDQ group must list in the IPA each vessel harvesting Bering Sea pollock CDQ on behalf of that CDQ group that will participate in that IPA.

Comment 36: If a vessel is eligible to participate in more than one sector, that vessel should be able to participate in more than one IPA. This would occur for a vessel that is in the catcher/processor sector and fishing for a CDQ group or for a vessel that can fish in the mothership sector and inshore cooperative sector.

Response: NMFS agrees that if a vessel is eligible to participate in more than one sector, then that vessel can participate in an IPA for each sector.

Comment 37: Clarify whether a CDQ group must submit a separate proposed IPA if they decide to participate in an IPA together with members of another AFA sector.

Response: The IPA representative must submit an application for approval of a proposed IPA to NMFS. A CDQ group that is a member of that proposed IPA will be listed in the IPA; this CDQ group does not need to separately submit the same proposed IPA.

Comment 38: Two different deadlines are identified for IPAs; October 1 and November 1. Which is correct?

Response: Both deadlines are correct. October 1 is the deadline for submitting a proposed IPA or amended IPA under § 679.21(f)(12)(iv). November 1 is the deadline in the proposed rule for the IPA representative to submit amendments to the list of participants in the IPA. Note that, in response to comment 39, NMFS changed this deadline for amendments to the IPA list of participants, at § 679.21(f)(12)(v)(C)(*2*), to December 1.

Comment 39: NMFS should add a deadline for when NMFS will notify participants whose IPA is rejected to allow them sufficient time to amend their application or join a different IPA. The proposed rule, at § 679.21(f)(12)(iv)(D)(*2*), provides an applicant one 30-day period to address any deficiencies in the proposed IPA that NMFS identifies. The final rule should allow for a 45-day period to address, in writing, the IPA deficiencies identified by NMFS. Additionally, the November 1 deadline at § 679.21(f)(12)(v)(C)(*2*) for amendments to the IPA's list of participants should be changed to December 1 to accommodate NMFS' review and notification process and the potential for amending and/or switching IPAs.

Response: NMFS will expeditiously review the IPAs and notify the IPA representative of any deficiencies as soon as possible; therefore, a deadline for NMFS review is not necessary. The 30-day period for an IPA representative to address any identified deficiencies was put in regulations to ensure that deficiencies could be addressed and NMFS could approve an IPA before the upcoming fishing year. Therefore, NMFS did not change this 30-day period in the final rule. NMFS agrees that the deadline for amendments to the list of participants for an IPA should be changed from November 1 to December 1 and has made this change in the final rule at § 679.21(f)(12)(v)(C)(*2*).

Comment 40: The proposed rule, at § 679.21(f)(12)(iii)(B)(*3*)(*i*), says that the IPA must contain a written description of the incentives that will be implemented under the IPA to ensure that the operator of each vessel participating in the IPA will avoid Chinook salmon at all times while directed fishing for pollock. This does not correctly reflect the Council motion, which says that an IPA must describe incentives for each vessel to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance in all years. In other words, the IPA is to describe the incentives that promote salmon avoidance. The incentives will not ensure that participants avoid salmon at all times. The final rule should reflect the Council motion.

Response: NMFS agrees and has changed the IPA requirement in the final rule, at § 679.21(f)(12)(iii)(B)(*3*)(*i*), to reflect the Council motion.

Comment 41: The final rule, at § 679.21(f)(12)(v)(D), should include the criteria that NMFS would use to disapprove of an IPA as identified in the preamble (75 FR 14029; March 23, 2010). The reasons for disapproval should also include where the IPA lacks a component intended to prevent the sector from exceeding the performance standard. As the performance standard applies to all members of a sector who participate in IPAs, rather than to each IPA individually, the IPAs should be required to include provisions to keep the entire sector below the performance standard. This is particularly important in the event that vessels in any one sector participate in more than one IPA. And, this criteria should also be added to the final rule at § 679.21(f)(12)(v)(D)(*1*)(*ii*) for disapproval of a proposed amendment to an IPA.

Response: NMFS disagrees that additional criteria for disapproval should be specified in the regulations. The requirements in the regulations that an IPA must meet for NMFS approval are directly related to the Council motion, and NMFS will disapprove an IPA that does not meet these requirements. The proposed rule preamble provides examples of ways that an IPA would not meet the requirements specified in the regulations, but these are just examples and there are other ways NMFS may decide an IPA does not meet the regulatory requirements. Additionally, under § 679.21(f)(12)(iii)(B)(*3*)(*v*), an IPA must describe how the IPA ensures that the operator of each vessel governed by the IPA will manage his or her Chinook salmon bycatch to keep total bycatch below the performance standard for the sector in which the vessel participates. Under § 679.21(f)(12)(v)(D), NMFS will disapprove an IPA or an amendment to an IPA that does not meet this requirement.

Comment 42: For the requirement that the IPA contains incentives to ensure that the operator of each vessel will avoid Chinook salmon while fishing for pollock, "avoid" should be changed to "minimize to the extent practicable" to use the same language as National Standard 9.

Response: The Council motion recommending Amendment 91 specifically requires that an IPA must describe incentives for each vessel to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance. This final rule implements Amendment 91. Additionally, this IPA requirement is consistent with National Standard 9. National Standard 9 states that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. This suggests the general goal is to avoid bycatch and if it cannot be avoided, minimize its mortality. In other words, the fact that part (B) uses the word "avoided" suggests that that word accurately encapsulates the principal aim of part (A) of National Standard 9. Therefore, the requirement to avoid bycatch is consistent with National Standard 9's parameters, namely, bycatch must be minimized to the extent practicable. Moreover, Amendment 91 is designed to minimize bycatch to the extent practicable, as required by National Standard 9, and the IPAs are one aspect in achieving that goal.

Comment 43: The IPAs operate outside of regulatory control, and we have no assurances that actual bycatch will be any lower than the limits placed in regulation.

Response: The IPAs will not operate outside of regulatory control. Regulations establish the performance based requirements that each IPA must accomplish. Any number of different incentive plans could meet these regulatory requirements. The requirements for the IPA are performance based because fishery participants have more tools available to them to create incentives to minimize bycatch at the vessel level than could be proscribed through Federal regulation. As designed, an IPA can be more responsive and adaptive than Federal regulations and can use tools not available to managers, such as fees and penalties. IPAs are included as a performance-based provision and the Federal regulations are flexible in allowing the pollock fleet to modify the IPAs as performance information becomes available to ensure that the IPAs meet the goals in Amendment 91.

Additionally, the final rule requires the IPA representative to submit an annual report to the Council that will be the primary tool through which the Council will evaluate whether its goals for the IPAs are being met. Also, the proposed economic data collection program that the Council and NMFS are developing is designed to provide quantitative information to evaluate how an IPA influences a vessel's operational decisions to avoid Chinook salmon bycatch. See response to comment 44.

Comment 44: Under Amendment 91, there is no opportunity for a substantive review of the IPAs by either NMFS or the Council, and no analysis of expected performance is conducted by NMFS in approving the plans. The IPA requirements do not specify the types of incentives that must be contained in the plans. Under this review process, only the Council addresses the efficacy of the incentive programs, yet the incentive programs submitted to NMFS may not be the same programs initially submitted to the Council. In effect, no one, including the public, NMFS, and the Council, has the opportunity to assess the efficacy of the final incentive programs submitted to NMFS. Moreover, the Council has no authority to approve or deny the IPAs. An FMP amendment would have to be initiated to change the requirements.

Response: The comment is correct that there is no process to review the potential efficacy of the IPAs prior to the first year of implementation. After the first year of implementation, substantive review of the IPAs will occur annually as part of the Council's public process and will be based on the performance of the IPAs. The IPA annual report is the primary tool through which the Council will evaluate whether its goals for the IPAs are being met. The IPA annual report must contain: (1) A comprehensive description of the incentive measures in effect in the previous year; (2) a description of how these incentive measures affected individual vessels; (3) an evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in the absence of the measures; and (4) a description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and

the reasons that the amendments to the IPA were made.

The proposed economic data collection program, once implemented, would provide information to the analysts and the Council for determining the effectiveness of the IPAs. The data collection program will focus on (1) evaluating the effectiveness of the IPA incentives, the PSC limits, and the performance standard in terms of minimizing salmon bycatch in times of high and low levels of salmon abundance, and (2) evaluating how Amendment 91 affects where, when, and how pollock fishing and salmon bycatch occur. The proposed data collection program would also provide data for NMFS and the Council to study and verify conclusions drawn by industry in the IPA annual reports. Due to the complex nature of economic data collection, the data collection program will be implemented after Amendment 91.

By design, IPAs are adaptive and can be modified as necessary. The IPAs may be amended in response to the Council's review to better achieve the program goals. Furthermore, if analysis prepared after the incentive plans are in effect demonstrates that the Council's goals are not being met, then NMFS and the Council could re-initiate analysis of alternative Chinook salmon bycatch management measures and recommend revised or new management measures in the future.

Comment 45: It is important that the public review and objectively assess how the IPAs are functioning. The qualitative approach suggested in the proposed rule is not adequate. The final rule should recommend that an IPA and its associated annual report contain objective, measurable, specific, and verifiable quantitative values or estimates for each of the IPA components.

Response: NMFS agrees that careful review and assessment of the IPAs are important. The Council motion specified the requirements for the IPA annual report to the Council and no changes to these requirements were made in the final rule. The proposed economic data collection program that the Council and NMFS are developing is designed to provide quantitative information to evaluate how an IPA influences a vessel's operational decisions to avoid Chinook salmon bycatch.

Comment 46: The EIS does not analyze the IPAs, which were relied upon to justify Amendment 91. NEPA requires that IPAs be analyzed as alternatives within the EIS if selection of a higher hard cap is based on performance under the IPAs. Without an analysis of the IPAs, there is no justification for allowing a higher cap if IPAs are in place. The agency argues that the IPAs need not be analyzed because it is the cap levels themselves which are being analyzed. One must then assume that the Council has effectively chosen a 60,000 hard cap. Assuming arguendo that this is the case, the Council's rhetoric does not match its action. In deliberations and in follow-up to the public, Council members have stressed that this is not really a 60,000 hard cap because of the IPAs and the performance standard. If the IPAs are truly insignificant enough such that they need not be analyzed in the EIS, they also cannot be justification for the two scenario approach.

Response: NMFS disagrees. As explained in EIS chapter 9, as long as the EIS analyzes and discloses the consequences of adopting the PSC limits specified in the alternatives, and the IPAs are a feature of the alternative that provides additional incentives to avoid Chinook salmon bycatch within these cap levels, the Secretary of Commerce can approve and implement Amendment 91 without an analysis in the EIS of the specific IPAs the pollock industry may submit.

The EIS analyzes the environmental impacts of Chinook salmon bycatch at the 60,000 and 47,591 Chinook salmon PSC limits. This analysis provides the best available information on the predicted impacts of bycatch at these levels because these PSC limits are the maximum amount of bycatch that could be caught in any given year. The EIS discusses the function of the sector-level performance standard to prevent each sector from exceeding its portion of 47,951 in more than three years in any seven consecutive years. Note that since the performance standard is on a sector basis, if a given sector exceeded its performance standard and fished up to its PSC allocation, total bycatch would still be below 60,000 Chinook salmon. Bycatch could only reach 60,000 Chinook salmon in a given year if each sector fished up to its PSC allocation. Therefore, the performance standard is the tool that will prevent bycatch from exceeding, on average, the historical 10-year average of 47,591 Chinook salmon.

The EIS makes no assumptions as to whether the IPAs will be effective; rather, the IPA component is an innovative approach that is designed to provide incentives for each vessel to avoid bycatch at all times with the goal of reducing bycatch below the PSC limits. The requirements for an IPA are performance based (*i.e.,* they address what an IPA should accomplish); any number of different incentive plans could meet these objectives. As designed, an IPA can be more responsive and adaptive than Federal regulations and can use tools not available to Federal managers, such as fees and penalties. IPAs were included as a performance-based provision, and the Federal regulations are flexible in allowing the pollock fleet to modify the IPAs as performance information becomes available to ensure that the IPAs meet the goals in Amendment 91. IPA performance will be reviewed annually (*see* response to comment 44). If information becomes available to indicate that Amendment 91 is not providing the expected Chinook salmon savings, NMFS will work with the Council to take additional actions to minimize Chinook salmon bycatch to the extent practicable.

Additionally, requiring, as the comment suggests, that fishery participants finalize an IPA years before it would be used in order for it to be analyzed would remove the adaptive nature of the IPAs and therefore remove some of its effectiveness. And, doing so would not have changed the analysis of the environmental impacts.

Non-Chinook Bycatch

Comment 47: The section at § 679.21(g)(2)(iii)(C) on ICA Chum Salmon Savings Area Notices should be re-written to more accurately describe the original intention of Amendment 84. While the twice weekly notices are required, ICA Chum Salmon Savings Area closures only occur if and when areas with bycatch in excess of the based rate, as described in paragraph (g)(2)(iii)(B), are identified. The sentence, "For any ICA Salmon Savings Area notice, the maximum total area closed must be at least 3,000 square miles for ICA Chum Salmon Area closures" is confusing and does not accurately reflect the original intention of the 3,000 square mile standard. The original intention was to assure that the ICA, not the notice, contain language that allows for the maximum areas available for a Chum Salmon Savings Area closure to be no less than 3,000 square miles. There was never an intention to require 3,000 square miles be closed by each notice as this sentence may be interpreted to mean.

Response: Substantive revisions to the regulations at § 679.21(g) governing the non-Chinook salmon portions of the VRHS ICA are not within the scope of this final rule. Revisions to the management of chum salmon bycatch in the Bering Sea pollock fishery was not considered among the alternatives analyzed for Amendment 91. The

Council currently is analyzing alternatives to address chum salmon bycatch, and NMFS will request that it consider these comments in developing its alternatives and analysis.

Comment 48: The last sentence in § 679.21(g)(2)(iii)(E) states that "Bycatch rates for Chinook salmon must be calculated separately from non-Chinook salmon, and cooperatives must be assigned to tiers based on non-Chinook salmon bycatch." This sentence is not necessary and should be removed.

Response: NMFS concurs and removed this sentence in the final rule. This requirement does not appear in current regulations governing the VRHS ICA and was added in the proposed rule in an attempt to clarify how the ICA would operate with the removal of regulations related to Chinook salmon. However, the intent of the regulations in this paragraph is clear without this additional sentence.

PSD Program

Comment 49: The proposed rule, at § 679.21(c)(2)(i)(D), requires catcher/processors and motherships to ensure that no salmon of any species pass the observer sample collection point. This seems to prohibit salmon from passing the observer sample collection point and into the factory area, yet salmon intended for the PSD program must be processed and frozen, and these activities take place in the factory area. The final rule should clearly indicate that it is acceptable for crew to process and freeze donation program salmon in the factory areas after the salmon have been counted.

Response: NMFS disagrees that a change in the final rule is necessary to allow for the transfer or processing of salmon under the PSD program, at § 679.26. The final rule, at § 679.21(c)(2)(i)(A), requires that the operators of catcher/processors or motherships must first sort salmon bycatch into an approved salmon storage location. Once the observer has determined the salmon count and collected biological samples, the salmon can be removed from the area, as described in § 679.21(c)(1), and can then be processed for the PSD program.

Comment 50: Salmon taken as bycatch are either discarded at sea or processed for food banks in the Pacific Northwest, far from the Western Alaska families which depend on salmon.

Response: NMFS encourages participation in the PSD program to reduce waste and provide high quality protein to those in need. Regulations at § 679.26 require any salmon donated to be handled by an authorized distributor. Any organization that can meet the requirements for a PSD program permit may apply to NMFS to become an authorized distributor. To date, only one authorized distributor, SeaShare, is permitted to handle donated salmon. Because of the logistics of handling and shipping the fish, and the limited resources for the program, only Pacific Northwest residents have benefited from the donated salmon. The PSD program is currently a voluntary program, with participants paying the cost of handling the fish. Having more authorized distributors that could provide donated salmon to Western Alaska communities would be a good way to reduce salmon waste in the pollock fishery. More information about the PSD program is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/ram/psd.htm*).

Equipment and Operational Requirements

Comment 51: The proposed rule, at § 679.28(j)(1)(viii), specifies that a video monitor is needed for viewing "within the tank." Because salmon are sorted from the catch after the catch is removed from fish storage tanks, there is no reason to require a camera in a fish storage tank. The final rule should remove the phrase "within the tank."

Response: NMFS agrees and has revised the final rule to eliminate the requirement to display the "activities within the tank". The final rule, at § 679.28(j)(1)(viii), clarifies that the purpose of the 16-bit video monitor is to enable the observer to view all areas where the sorting of salmon of any species takes place, in addition to the salmon contained in the storage container.

Comment 52: The preamble states (75 FR14029–14030; March 23, 2010) that NMFS would use the same method for accounting for Chinook salmon bycatch for all AFA sectors, yet the video monitoring requirement applies only to the catcher/processor and mothership sectors. The inshore sector should have the option to use the same video system as a method of ensuring compliance.

Response: NMFS disagrees that the inshore sector should have the option to use video monitoring. In the EIS, NMFS examined the possibility of requiring video at shoreside processors but found that this was not a reasonable option because factories are so complex that it would be logistically impossible to cover all areas where a salmon could appear in the factory. On the other hand, the areas to be monitored on catcher/processors and motherships are limited in space and complexity. Thus, electronic monitoring systems will be able to view all the areas required with a minimal amount of equipment.

Additionally, while the requirement for a census of salmon will be the same for catcher/processors, motherships, and shoreside processors, the duties of an observer differ. The observers aboard catcher/processors and motherships must conduct species composition sampling while the sorting of catch is occurring. Therefore, observers may not be able to monitor the sorting at all times due to their other duties. Video monitoring is required to verify all salmon are sorted from the catch into the appropriate storage container prior to entering the processing area of the factory and remain in the storage container until removed under the direction of the observer. The primary duties for observers assigned to shoreside processors differ from the observer duties on a catcher/processor or mothership. While the offload is occurring at a shoreside processor, observers ensure that all salmon are properly sorted from the catch and are not required to complete other duties during an offload.

Comment 53: The video system will work well to augment the observer's role as a salmon census monitor. Proposed regulations at § 679.28(j) require the installation of a video system to allow observers to view all areas where salmon might be sorted. Observers would be able to randomly scan the monitors to assure proper handling of the salmon. If the vessel reported salmon bycatch numbers from the unobserved periods that varied from those of the observed periods, the observer could review the video to determine whether salmon were being missed by the crew.

Response: NMFS agrees. The electronic monitoring systems are a tool for the observers to use to determine whether proper sorting occurs during periods when they may not be able to monitor and verify that no salmon have been removed from the salmon storage container before they have the opportunity to count the number of salmon and collect biological samples and scientific data.

Tables 47a to 47d to Part 679

Comment 54: It is vitally important that NMFS provide the vessel owners, listed in table 47c, with the total pounds of pollock being accredited to each vessel during the three AFA inshore history years, 1995 to 1997. These pound estimates must be compared to the owner's records and the vessel owners must be provided the opportunity to provide contradictory information to NMFS.

Response: NMFS cannot provide the AFA catcher vessel's catch history due to the confidentiality requirements established by the State of Alaska on fish ticket data (AS 16.05.815). Under Federal regulations at § 679.62(a), the Regional Administrator used State of Alaska fish ticket records to establish the Official AFA Record to determine (1) a catcher vessel's eligibility for an AFA permit and (2) a catcher vessel's official AFA inshore cooperative catch history. Due to the confidential nature of these records, NMFS does not release or verify historic catch data for an individual AFA pollock catcher vessel.

State of Alaska fish tickets document the harvest of fish sold, discarded, or retained by the fisherman for personal use. The information collected includes species composition, weight, gear used, date harvested, who caught the fish, processor's license code, and other information specific to each fishery. As records of purchase between the processors and the fishermen, fish ticket data are confidential. The owners of fish tickets can request fishing records from any local office of ADF&G. In order to receive a vessel's catch history, vessel owners that are not also owners of the fish tickets must obtain confidentiality wavers. AFG&G clears the waivers prior to releasing the certified fish tickets.

Comment 55: The proposed rule, at column D of Table 47c to part 679, inaccurately lists the percent of inshore sector pollock assigned to each catcher vessel. AFA catcher vessels have relied on cooperative catch data to determine each vessel's individual share of the inshore sector's pollock allocation. The shares of each catcher vessel's inshore pollock allocation in Table 47c differ significantly from cooperative records and from the percentages some vessel owners and cooperatives previously believed NMFS had applied to pollock allocations. NMFS should afford each catcher vessel owner the opportunity to challenge the percentage of the inshore sector's pollock allocation because these values are used to calculate vessel-level Chinook salmon limits and may determine a vessel's ability to harvest pollock. To not do so will unjustly disadvantage many catcher vessel owners.

Response: NMFS disagrees that changes are necessary to the percent of inshore pollock assigned to each catcher vessel in column D of Table 47c to part 679. The values NMFS assigned to each AFA eligible inshore catcher vessel were calculated from the Official AFA Record, defined at § 679.2, which represents the best scientific information available.

Following the passage of the AFA by Congress in 1998, NMFS compiled the Official AFA Records for each vessel potentially qualifying for an AFA permit. As specified at § 679.4(l), the information included vessel ownership, documentation of harvests made by vessels during the AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during the AFA qualifying period. For inshore catcher vessels, individual catch histories were required to determine fishery eligibility and annual catch allocations under the AFA. NMFS relied on State of Alaska fish tickets to establish a comprehensive account of all groundfish catch by catcher vessel because fish tickets are required for any groundfish landed in State waters or delivered to plants or processing vessels operated in State waters. See response to comment 54.

Since the 2000 directed pollock fishing season, the catch histories of individual AFA eligible vessels have been used to calculate each cooperative's percentage allocation of the inshore sector's portion of the TAC. NMFS converts individual vessel catch histories into annual quota share percentages assigned to each vessel in a process described in regulation at § 679.62(a). The annual Bering Sea pollock allocation to each inshore cooperative is equal to the aggregated member vessel quota share percentages. The resulting cooperative percentages are then applied to the inshore sector's portion of the Bering Sea pollock TAC to determine each cooperative's pollock allocations.

Each year NMFS announces the harvest specification for the directed pollock fishery in the Bering Sea subarea. NMFS posts the sum of member vessel's official catch histories, the percentage of inshore sector allocation, and the corresponding allocation for each inshore pollock cooperative and open access fishery, should one exist. These tables are posted on the Alaska Region Web site (*http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm*).

NMFS previously provided an appeals process under which the owners of vessels and processors could appeal NMFS' determinations relating to AFA eligibility or AFA inshore cooperative allocations. Both the emergency interim rule (65 FR 380, January 5, 2000) and the final rule implementing AFA related amendments (67 FR 79692, December 30, 2002) established an appeals process similar to the process for appealing individual fishing quota and license limitation programs. Further, the regulations implementing the AFA-related FMP amendments provided an opportunity for, and placed the burden on, each applicant for AFA permits to correct any inconsistencies with the Official AFA Record, including catch histories.

Following that appeals process and in response to challenges by cooperatives, NMFS revised the Official AFA Record. NMFS responded to each challenge that provided individual vessel catch histories as evidence of discrepancies between cooperative records and the Official AFA Record. In order to verify claims, NMFS compared the cooperatives records to the Official AFA Record and, if necessary, observer information. In several cases this vetting process resulted in corrections to the Official AFA Record and the calculations of a cooperative's allocation of Bering Sea pollock TAC. Therefore, the quota share percentages in Column D of Table 47c, which were derived from the Official AFA Record, represent the best information available for allocating Chinook salmon PSC limits. The creation of another appeals process or other revisions to the pollock quota share allocations that were established under the AFA and relied on by NMFS to allocate pollock to cooperatives for the past 10 years are beyond the scope of this action. Should the Council determine that further refinement of Table 47c is necessary, additional rulemaking would be required.

Furthermore, NMFS disagrees that the percentages listed in Table 47c disadvantage vessel owners. Under Amendment 91, NMFS uses these vessel level percentage assignments listed in Table 47c to calculate the opt-out allocation at § 679.21(f)(4)(i)(C) or open access fishery allocation, the annual threshold amount at § 679.21(f)(6)(ii)(C), and the IPA minimum participation for catcher vessels under section § 679.21(f)(12)(i)(A)(*3*). NMFS allocates transferable Chinook salmon PSC allocations to each inshore cooperative, not to the individual vessels. The management of PSC allocations is handled within each cooperative through private contracts with member vessels and such transactions are not within the scope of this action.

Comment 56: Chinook salmon PSC limits are based on the historical pollock harvest; therefore, it is important that these figures be identical to the cooperative's records. Carry the percentages on the table to four decimal places (ten-thousandths place) rather than two.

Response: NMFS agrees and has revised the final rule to include the percentages in Column D of Table 47c

in four decimal places. NMFS notes that the Chinook salmon associated with each vessel has not changed.

Amendment 91

Comment 57: Use an emergency regulation to immediately implement a hard cap of 32,500 Chinook salmon. This lower cap level will provide protection to salmon populations while allowing the pollock fishery to operate.

Response: Emergency action is not warranted at this time in light of the reductions from the high Chinook salmon bycatch years. In 2008, the pollock fleet caught 19,928 Chinook salmon. In 2009, the pollock fleet caught 12,410 Chinook salmon. For the 2010 pollock A season, and the pollock B season that opened on June 10, bycatch rates are comparable to the low bycatch rates in 2009.

Comment 58: The Council has justified a higher cap on the basis that they must balance National Standard 9 with National Standard 1, which requires that conservation and management measures prevent overfishing, while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. However, the EIS shows that even at the lowest cap level analyzed, 29,300 Chinook salmon, optimum yield was achieved overall throughout the time period analyzed in the EIS. This time period includes the highest bycatch on record, and the three highest bycatch levels in the past eighteen years, so the fact that optimum yield was achieved even with these bycatch levels suggests that a bycatch cap at the lowest level analyzed, 29,300 Chinook salmon, is indeed practicable for the pollock fleet, and would comport with National Standard 1. This being the case, a 60,000 hard cap is not necessary to meet National Standard 1 or the practicability requirement of National Standard 9, and in fact seems designed more to protect the pollock fishery's revenues than the health of Western Alaska's salmon and those who depend upon them.

Response: Amendment 91 complies with National Standards 9 and 1, and the 60,000 Chinook salmon PSC limit is one component of this program. In developing this program, the Council recognized that the number of Chinook salmon caught as bycatch in the pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a combination of management measures that together achieve its objective to minimize bycatch to the extent practicable in all years while providing the fleet the flexibility to harvest the pollock TAC.

Since Amendment 91 divides the PSC limit between the A and B seasons and allocates the PSC limits to the sectors, cooperatives, CDQ groups, and, potentially, non-transferable allocations, the actual allocations are small and could be limiting to an entity that is trying to avoid bycatch in a high bycatch year. In these years, the flexibility of the higher PSC limit is necessary for each sector, cooperative, or CDQ group to harvest its pollock allocation. Thus, Amendment 91 provides the flexibility for the fleet potentially to harvest its TAC, which is one aspect of achieving optimum yield in the long term. Amendment 91 balances this flexibility with the performance standard and IPA components that provide incentives for each vessel to avoid Chinook salmon at all times while fishing for pollock.

Comment 59: Amendment 91 is in direct conflict with NMFS' stated management goal of avoiding bycatch of a prohibited species like Chinook salmon. The hard cap amounts do not reduce bycatch but are an allowance for higher bycatch.

Response: NMFS disagrees. Amendment 91 achieves the stated management goal to minimize Chinook salmon bycatch to the extent practicable while achieving optimum yield by maintaining flexibility for the pollock fleet to harvest the TAC. The PSC limits are not an allowance for higher bycatch, they are one aspect of the program that imposes an absolute limit on Chinook salmon bycatch. Amendment 91 also contains a performance standard to ensure that Chinook salmon bycatch will not exceed, on average, the recent 10-year average Chinook salmon bycatch and will be much lower than bycatch levels several years prior to and including 2007. The IPAs will provide incentives for each vessel to avoid Chinook salmon bycatch at all times. Therefore, Amendment 91 aims to achieve greater reductions in Chinook salmon bycatch than the PSC limit and performance standard.

Comment 60: Members of the Bering Sea pollock fishery remain cautiously optimistic that Amendment 91 and its implementing regulations will provide the incentives and tools necessary to enable the pollock industry to fully harvest and process the annual pollock TAC while, at the same time, minimizing to the extent practicable the fishery's bycatch of Chinook salmon—all as required by the Magnuson-Stevens Act and the national standards embodied therein.

Response: NMFS acknowledges the comment.

Comment 61: The Amendment 91 text should be clarified. As written, one of the Amendment 91 changes to the FMP executive summary states "Attainment of a Chinook salmon PSC allocation closes directed fishing for pollock in the Bering Sea subarea." It would be more accurate to State that "Under certain circumstances, attainment of a sector's or sub-sector's Chinook salmon PSC allocation may close directed fishing for pollock by that sector or sub-sector in the Bering Sea subarea."

Response: NMFS disagrees. Additional clarification is not required because the executive summary provides readers a general description of the BSAI groundfish fisheries and the conservation and management measures promulgated under the FMP. The Chinook salmon bycatch management program is described in detail at section 3.6.2 of the FMP, while other aspects of the program are specified in this final rule implementing Amendment 91. Also note that the term "sub-sector" does not appear in the FMP, in the regulations at 50 CFR Part 679, or in the Council's final action recommending Amendment 91.

Comment 62: Amendment 91 appears to be more weighted to the concerns of the profitability of industrial fisheries than to the real impacts to communities, the subsistence way of life, and the protection of Chinook salmon stocks. Rules need to be put in place that prioritize the conservation of Chinook salmon returns over the continuation of the pollock fishery in a way that allows them to remove too many Chinook salmon.

Response: Amendment 91 prioritizes the conservation of Chinook salmon by the pollock fishery. However, it does so in a way that provides the pollock fleet the flexibility to determine how best to avoid Chinook salmon while harvesting pollock. In developing this program, NMFS and the Council analyzed and considered the impacts to communities, subsistence, and Chinook salmon stocks in the EIS and RIR (*see* **ADDRESSES**).

Comment 63: The Council's rejection of bycatch proposals submitted by the most affected communities is not reassuring that future fishery management in the Arctic will be responsive to community concerns and that protective measures will be

implemented to avoid negatively impacting critical stocks of fish on which Arctic coastal communities rely.

Response: The Council's Fishery Management Plan for Fish Resources of the Arctic Management Area includes in its management policy the use of adaptive management through community-based or rights-based management. The objectives of the plan include Alaska Native and community considerations. In managing Arctic fisheries, the Council promotes management measures that, while meeting conservation objectives, are designed to avoid significant disruption of existing social and economic structures and incorporate local and traditional knowledge in fishery management, encouraging Alaska Native participation and consultation in fishery management.

Before any fishery may develop in the Arctic, an analysis must be provided of the historic commercial, sport, or subsistence harvest of the potential target and bycatch species and of the customary and traditional subsistence use patterns and evaluation of impacts on existing users. The combination of the FMP's policy and objectives with the Council's efforts to work with Native communities through its Rural Outreach Committee, should ensure concerns of Arctic communities are considered in Arctic fisheries management decisions. Arctic communities will be able to work with the Council to ensure sustainable management of Arctic marine fish resources.

Comment 64: The salmon bycatch in the pollock fishery is impacting the Copper River salmon fisheries. As Chinook salmon runs decrease elsewhere, the harvest pressure on Copper River stocks increase.

Response: NMFS acknowledges that salmon fishing effort may shift from areas with low Chinook salmon returns to more favorable fishing areas; however, many factors likely contribute to decreases in run strength. ADF&G manages the Copper River salmon fisheries to address conservation concerns.

Comment 65: No data was presented to the Council or made available to the public which would support the rationale that a low cap and low allocations could preclude pollock fishing by vessels or groups of vessels.

Response: NMFS disagrees. The EIS and RIR analysis show that a low PSC limit could limit the pollock fishery harvests below the pollock TAC in many years because a low PSC limit would not accommodate the high variability in Chinook salmon encounter rates experienced in the pollock fishery, or the unpredictability of these rates (*see* **ADDRESSES**). Additionally, as the analysis shows, if the low PSC limit were allocated to sectors, cooperatives, and CDQ groups, it could result in allocations so small that it could effectively preclude pollock fishing by a vessel or group of vessels. On the other hand, not allocating the PSC limit could result in a race for fish, which would undermine the rationalized management of the AFA and the current pollock fishery management.

Comment 66: The pollock fleet's Chinook salmon bycatch significantly impairs the sustainability of western Alaska Chinook salmon runs.

Response: As explained in the EIS analysis, the degree to which levels of bycatch are related to declining returns of Chinook salmon is unknown (*see ADDRESSES*). While Chinook salmon bycatch in the pollock fishery may be a contributing factor in the decline of Chinook salmon, the absolute numbers of the ocean bycatch that would have returned to western Alaska are expected to be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook bycatch. Although the reasons for the decline of Chinook salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely caused poor survival of Chinook salmon.

Comment 67: Cease operation of the pollock fishery until the Chinook salmon rebound to acceptable levels.

Response: NMFS acknowledges this comment; however, the closure of the Bering Sea pollock fishery is beyond the scope of this action.

Comment 68: The burden of conservation should be shared with the pollock fleet. Rural subsistence users have carried this burden by themselves for too long. In many parts of rural Alaska commercial, sport, and subsistence fisheries have been severely restricted, yet escapement goals are not met.

Response: NMFS acknowledges this comment.

Comment 69: Available evidence suggests that practicable and easily achievable ways to reduce bycatch below Amendment 91 cap levels exist. Amendment 91 falsely relies upon a presumption that further reductions in bycatch are not practicable; however, no evidence is presented in the EIS or Council record that this is the case. Evidence suggests that the high bycatch years may be a function of fishing behavior and fishing patterns that are easily changed (*e.g.,* time area closures).

Response: Amendment 91 is premised on that fact that the pollock fleet can and will reduce bycatch substantially below the 60,000 Chinook salmon PSC limit and is specifically designed, through the performance standard and IPAs, to provide incentives for each vessel to change fishing behavior to avoid Chinook salmon at all times. With Amendment 91, additional command and control management measures, such as time area closures, are not necessary to minimize bycatch to the extent practicable.

Comment 70: Overall, the proposed rule provides a good overview of the issues and challenges involving salmon bycatch reduction in the pollock fishery. The proposed rule clearly presents and describes in sufficient detail the measures managers intend to use to address salmon bycatch in the pollock fishery while assisting the public in understanding the potential impacts of those measures.

Response: NMFS acknowledges this comment.

Comment 71: The Council justified a higher cap on the basis of the possibility of a "lightning strike"—or a single haul of pollock with a high amount of Chinook salmon bycatch. The Council did not consider other methods to address this concern, such as a bycatch pool in which each vessel contributes a portion of their bycatch allocation to cover a vessel that has a lightning strike event.

Response: The Council considered public testimony that lightning strikes of Chinook salmon bycatch occur, especially in the catcher vessel fleet, in understanding the unpredictability of Chinook salmon bycatch. To address this, Amendment 91 does not allocate Chinook salmon PSC to vessels. In a sense, the Chinook salmon PSC allocations are a type of bycatch pool in that they will be allocated to the mothership sector, the catcher/processor sector, inshore cooperatives, and CDQ groups to manage among participating vessels.

Comment 72: Remand the Chinook salmon bycatch issue back to the Council with a strong statement about the failure of Amendment 91 to adequately protect and conserve Chinook salmon stocks, to provide for subsistence uses (including the small scale in-river commercial fisheries), and to meet the United States' obligation under the Yukon River Salmon Agreement. Acknowledge NMFS' emergency regulatory authority under the Magnuson-Stevens Act should bycatch reach 32,000 Chinook salmon

during the period of the remand. Continuing under the status quo while the Council reconsiders Amendment 91 is far more acceptable and presents less of a risk to Chinook salmon stocks and the subsistence way of life than a 60,000 Chinook salmon PSC limit. The Council can act quickly on a remand because the EIS analyzed a full range of alternatives.

Response: On May 14, 2010, NMFS approved Amendment 91. As demonstrated in the EIS and ROD, Amendment 91 minimizes Chinook salmon bycatch to the extent practicable and achieves optimum yield on a continuing basis. NMFS has determined that Amendment 91 is consistent with the National Standards and other applicable law.

Amendment 91, through the IPA component, is intended to result in Chinook salmon bycatch levels below the PSC limit and performance standard. Amendment 91 is a highly innovative program, however, there is inherent uncertainty over how effective this novel approach will be in minimizing bycatch over all years and at all levels of Chinook salmon and pollock abundance. NMFS will be monitoring the bycatch closely during the season, and if information becomes available to indicate that Amendment 91 is not providing the expected Chinook salmon savings, NMFS will work with the Council to take additional actions to minimize Chinook salmon bycatch to the extent practicable.

Comment 73: Amendment 91 rewards the pollock fleet for less than responsible fishing behavior practiced by some of the fleet in 2006 and 2007. Amendment 91 is based, in part, on rationale and bycatch averages that incorporate these high years of "voluntary" compliance. This "trust me" approach in VRHS approach has failed miserably. The pollock industry should bear the burden of its past excesses rather than reaping rewards.

Response: Amendment 91 is a direct response to the high Chinook salmon bycatch in 2006 and 2007, and does not reward the fleet for that bycatch. First, the 60,000 Chinook salmon PSC limit is below the three highest years of bycatch and is approximately half the amount of the highest year, 2007. Second, while the VRHS ICA was in place in 2007, after that year, the pollock fleet made significant changes to the system for 2008, 2009, and 2010, which, in addition to other factors, have resulted some of the lowest Chinook salmon bycatch since 1990. NMFS expects that these changes to fishing practices will remain under Amendment 91, and Amendment 91 provides incentives for further reductions in bycatch while preventing future bycatch from ever exceeding 60,000 Chinook salmon.

Comment 74: All quotas should be cut by 50 percent. You are starving all marine life that needs fish to stay alive. It is disgusting that you allow the commercial fish profiteers to walk away with one million dollars for a week's work. Those fish belong to all Americans, not just local profiteers.

Response: Amendment 91 will minimize Chinook salmon bycatch to the extent practicable and reduce the impacts of the pollock fleet on Chinook salmon. The environmental impacts of Amendment 91 and its alternatives were analyzed in the EIS (*see* **ADDRESSES**).

Comment 75: The Council and NMFS have an obligation to consider the Endangered Species Act (ESA) in setting the bycatch caps. The effects of Chinook salmon bycatch on the viability of listed Pacific Northwest Chinook salmon species are unknown; therefore, take may exceed permissible levels.

Response: NMFS and the Council considered the ESA in setting the PSC limits. NMFS Alaska Region conducted a formal section 7 consultation under the ESA for Amendment 91 with the NMFS Northwest region. In the December 2, 2009, biological opinion (*see* **ADDRESSES**), the Administrator, NMFS Northwest Region, determined that fishing activities conducted under Amendment 91 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened salmon species or result in the destruction or adverse modification of critical habitat.

There is no permissible level of take for ESA-listed salmon. The take that is expected to occur with the action is established in the incidental take statement included in the biological opinion for this action. The incidental take statement determined that the amount or extent of expected take of ESA-listed Chinook salmon in the Bering Sea pollock fishery would be equivalent to the amount of ESA-listed Chinook salmon taken under the Chinook salmon PSC limits established by Amendment 91. If this level of take is exceeded, NMFS would be required to reinitiate section 7 consultation.

Information on the bycatch of ESA-listed stocks is from the recovery of coded-wire tagged fish from ESA-listed stocks. The only ESA-listed stocks that have been recovered from bycatch in the BSAI groundfish fisheries are from the Lower Columbia River and Upper Willamette River Chinook salmon stocks. All of these recoveries have been from the Bering Sea pollock fishery. The frequency of coded-wire tag recovery, in relation to the number of coded-wired tagged fish released from these stocks, indicates that the take of these ESA-listed stocks in the BSAI groundfish fisheries is rare.

The final rule will improve the collection of Chinook salmon information by requiring the retention, sorting, and counting of every Chinook salmon in every haul or fishing trip. Each Chinook salmon with a clipped adipose fin, indicating a coded-wire tag may be present, will be sampled for coded-wire tags. Because of this improved sampling process, NMFS will know the actual number of coded-wire tagged ESA-listed salmon taken by the Bering Sea pollock fishery.

Comment 76: The transboundary escapement goals were not met in 2007 or 2008; therefore, the statement that ". . . salmon escapement targets are being met in general . . ." is not true. The transboundary escapement goal was only met in one out of three years because of massive curtailment of the subsistence fishing and a commercial fishing stand down.

Response: NMFS acknowledges this comment. The EIS and RIR contain information on the Yukon River escapement through 2009 *(see* **ADDRESSES**).

Comment 77: The Council process in adopting Amendment 91 allowed blatant conflicts of interest and disregarded the Obama administration's position on conflict of interest standards. The pollock industry was represented by voting Council members with past and/or future financial ties to the pollock fishery. When one distills the Council's decision, it is clear that it was not guided by science, facts, or law, but by misplaced policies facilitated by a process that allows for at least the appearance of a conflict of interest.

Response: NMFS disagrees. NOAA Office of General Counsel reviewed all of the financial disclosure forms that Council members had filed pursuant to § 600.235(b) and (c)(1), and concluded that the action would not have a significant and predictable effect on a financial interest disclosed in their reports. Therefore, no Council member was precluded from voting.

Comment 78: Proposed FMP revisions are problematic because they would create or perpetuate a bycatch standard that is inconsistent with the Magnuson-Stevens Act and the accompanying national standards. Each revision utilizes or depends on a requirement that groundfish fishermen "avoid" the bycatch of prohibited species including Chinook salmon. This mandate goes significantly further than the requirement of National Standard 9, which requires fishermen to "minimize

bycatch to the extent practicable." The effect of the proposed revisions would be to arbitrarily eliminate the "to the extent practicable" qualifier of National Standard 9; replacing it with language that could jeopardize attainment of optimum yield from the fishery as required by National Standard 1. The statutory language, minimize to the extent practicable, should be utilized in establishing the regulatory mandate.

Response: Amendment 91 does not change prohibited species management under the FMP, except to implement the specific provisions of the Chinook salmon bycatch management program, as recommended by the Council. Prohibited species, which include Pacific halibut, Pacific herring, Pacific salmon and steelhead, king crab, and Tanner crab, are the most regulated and closely managed category of bycatch. The FMP states that catch of all prohibited species must be avoided. This is not a new requirement or modified language under Amendment 91. Amendment 91 only changes the FMP text in the paragraphs in question to provide for the new regulatory requirement to retain salmon in the pollock fishery so that all salmon can be counted. Changing the FMP's provision that prohibited species must be avoided would require consideration and recommendation by the Council.

The FMP is consistent with National Standard 9. National Standard 9 states that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. This suggests the general goal is to avoid bycatch, but if it cannot be avoided, to minimize bycatch mortality. In other words, the fact that part (B) uses the word "avoided" suggests that that word accurately encapsulates the principal aim of part (A) of National Standard 9. Therefore, the FMP is consistent with National Standard 9's parameters, namely, that bycatch must be minimized to the extent practicable.

For Chinook salmon, Amendment 91, by design, provides the flexibility for the fleet potentially to harvest its TAC, which is one aspect of achieving optimum yield in the long term. Management of the other prohibited species is outside the scope of this action.

Comment 79: NOAA has the responsibility to modify the Council's recommendations to fulfill Federal obligations under ANILCA, ESA, Pacific Salmon Treaty, Environmental Justice, and Federal responsibility to tribal governments. NOAA should fulfill these obligations by not implementing Amendment 91 and insisting on the smaller bycatch rates proposed and supported by the most directly impacted communities.

Response: NMFS has complied with all applicable laws, Executive Orders, and international obligations in approving and implementing Amendment 91, as documented in the EIS and ROD (*see* **ADDRESSES**).

Comment 80: Amendment 91 does not comply with National Standard 8. Western Alaska communities depend on Chinook salmon as a subsistence resource and for commercial fishing. Every additional fish that escapes the pollock fleet will make a difference to communities where fishing is already severely restricted. The impacts of Amendment 91 on the pollock fishery are minor in comparison.

Response: Amendment 91 complies with National Standard 8. National Standard 8 states, "Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data based on the best scientific information available, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities" (16 U.S.C. 1851(a)(8)).

The EIS and RIR analyze the importance of Chinook salmon and pollock resources to fishing communities. Amendment 91 mitigates the impacts of status quo bycatch on Chinook salmon fishing communities and does not negatively affect the sustained participation of these fishing communities. Amendment 91 balances the needs of these communities with the ability to ascertain direct impacts to salmon streams from bycaught salmon. Understanding that this action cannot rebuild salmon streams, this action is likely to return more fish to these streams than many of the other alternatives considered by the Council. Amendment 91 also balances the needs of pollock fishing communities with need to minimize Chinook salmon bycatch in developing a program that provides the fleet the flexibility to harvest the pollock TAC.

Comment 81: The description of National Standard 1 in the preamble is an inaccurate interpretation of optimum yield. The preamble states that providing the opportunity for the fleet to harvest its TAC is one aspect of achieving optimum yield in the long term. The mere opportunity to fish under regulations where catching fish is not possible provides nothing but an opportunity to incur costs. It is the catching of fish and the creation of economic profits that produces optimum yield.

Response: NMFS disagrees with the commenter's description of optimum yield and the statement that the proposed regulations make it impossible to catch pollock. National Standard 1 requires that "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry" (16 U.S.C. 1851(a)(1)). The Magnuson-Stevens Act expressly defines optimum yield in a comprehensive manner. Specifically, it means "the amount of fish which * * * (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; [and] (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor. * * * ." 16 U.S.C. 1802(33).

Under National Standard 1, the optimum yield standard must be achieved over the long-run but not necessarily with precision each individual fishing year. Accordingly, as the preamble states, achieving optimum yield in the BSAI groundfish fishery does not equate to ensuring the ability to harvest the entire pollock TAC in any given year. For the BSAI management area, NMFS has established that the optimum yield is a range from 1.4 to 2.0 million metric tons (see § 679.20(a)(1)(i)). The record indicates that the regulations implementing Amendment 91 will not impede the BSAI groundfish fishery from meeting this standard.

Comment 82: The Amendment 91 PSC limits will not meet the obligations under National Standard 9 to reduce bycatch, but rather will maintain bycatch levels that are higher than historical averages.

Response: NMFS disagrees. National Standard 9 requires that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Amendment 91 minimizes bycatch to the extent practicable. Amendment 91 is more than just a 60,000 Chinook salmon PSC limit. Amendment 91 complies with National Standard 9 because the performance standard ensures Chinook salmon

bycatch will not exceed, on average, the recent 10-year average and will be lower than bycatch levels several years prior to and including 2007. Additionally, if the IPAs work as intended, the bycatch should be well below that amount. If fishery participants do not form any IPAs, then the 47,591 PSC limit will be in effect, which is the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006.

Comment 83: NMFS' interpretation of § 210(a)(1)(B) of the AFA in relation to section 402(b)(2) of the Magnuson-Stevens Act, as described in the preamble (75 FR 14032; March 23, 2010), is entirely appropriate. Chinook salmon, as well as other species in the Bering Sea, are public resources held in trust by the Federal Government. As public trust resources, the collective owners of those resources, the American people, have a right to know how those resources are being used or otherwise affected. Therefore, NMFS should make available to the public data on not just Chinook salmon bycatch, but on all bycatch in the pollock fishery on a vessel-by-vessel basis.

Response: NMFS acknowledges the comment and notes that making an AFA pollock fishing vessel's bycatch data available to the public, for species other than Chinook salmon, is outside the scope of Amendment 91.

Comment 84: Amendment 91 can be construed as a limited access allocation of Chinook salmon to the pollock fleet. Accordingly, the Council could use its Magnuson-Stevens Act 303A(e) authority to recover the costs of the management, data collection, analysis, and enforcement of the program.

Response: Section 304(d)(2) of the Magnuson-Stevens Act provides NMFS authority to collect fees for cost recovery of a limited access privilege program. That section specifies that the fee shall not exceed 3 percent of the ex-vessel value of the fish harvested under the program. This does not apply to the Chinook salmon bycatch management program because the Chinook salmon incidentally caught in the pollock fishery are not sold and therefore have no ex-vessel value.

Comment 85: Necessary information on contributions of different Chinook salmon stocks to the bycatch has not been determined. The pollock industry should be required to pay for a robust genetic research program to determine the exact Chinook salmon stock contributions as this knowledge is critical in determining impacts to various watersheds and communities hit hard by the decline of Chinook salmon.

Response: NMFS agrees that genetic research is important for understanding the impacts of Chinook salmon bycatch in the Bering Sea pollock fishery and has taken steps to improve the collection and analysis of genetic data starting in the 2011 pollock fishery. Requiring the pollock industry to pay for this research, however, is outside of the scope of Amendment 91.

Comment 86: Develop and fund a comprehensive research program to adaptively manage salmon at all life-stages. This gravel-to-gravel research plan, which would emphasize hiring and development of local experts, would include community-based salmon research such as habitat assessments, integration of traditional knowledge, in-river and ocean sampling for genetic stock identification, and Chinook salmon's temporal and spatial use of ocean habitat.

Response: NMFS agrees that research on salmon at all life stages is important and notes that ADF&G, NMFS, the University of Alaska, and many other institutions currently conduct such research. A gravel-to-gravel research plan is outside of the scope of Amendment 91.

Comment 87: Use Magnuson-Stevens Act authority, in § 313(g)(1), to levy fines of up to $25,000 per vessel as an incentive to reduce bycatch and make these funds available to offset costs including conservation and management measures and much-needed research.

Response: NMFS and the Council considered using this provision of the Magnuson-Stevens Act and determined, based on guidance from NOAA Office of General Counsel, that it was not appropriate for minimizing Chinook salmon bycatch in the Bering Sea pollock fishery. Section 313(g)(1) of the Magnuson-Stevens Act authorizes the Council and NMFS to impose a "system of fines" on a per-salmon caught basis, and to use those fines to offset the costs of bycatch reduction research. The fine, however, is limited to $25,000 per vessel per season.

The use of the term "fine" in § 313(g)(1) makes this provision a penalty-based program. A concern with a penalty-based program is that it creates greater problems of proof. To prove a violation, NOAA would have to demonstrate that the vessel in question had exceeded a specific bycatch level. Experience shows that successful prosecution of this type of case requires a commitment of agency resources that is difficult to sustain. Further, since an enforcement action can take a significant amount of time to bring to successful conclusion, there can be no certainty that any fine would be recovered quickly, or that even a successful prosecution would have a deterrent effect on Chinook salmon bycatch violators. In short, since the deterrent effect of the $25,000 fine per vessel per season under § 313(g)(1) is relatively inconsequential, and given the length of time and agency resources necessary for successful investigations and prosecutions of violations of a fine-per-salmon-penalty program, any prosecution(s) under that program would not likely result in swift enforcement of salmon bycatch exceedences or the collection of substantial and timely funds for research.

Comment 88: Reducing bycatch of salmon in the commercial groundfish fisheries and implementing comprehensive research and monitoring are crucial to maintaining and restoring salmon runs, and should remain a priority for NMFS and the Council.

Response: NMFS acknowledges the comment.

Comment 89: Although NMFS has acknowledged the potential for unintended negative consequences of Amendment 91 on the northern fur seal populations, we urge NMFS to carefully monitor this action for any negative effects. The EIS for this action suggests that a hard cap could benefit the fur seal if the fleet shifts away from pollock prey areas, or the fishery is closed before reaching its total allowable catch. However, it is too early to determine the impact of hard caps on fur seals because of data limitations and the complexity of the ecosystem. We encourage caution in this approach.

Response: NMFS agrees that much needs to be learned about the potential effects of the pollock fishery on northern fur seals and about fur seal biology. A description of past and ongoing research is available on the National Marine Mammal Laboratory's Web site (*http://www.afsc.noaa.gov/nmml/species/species_nfs.php*). This research includes studies that should provide additional information regarding the pollock fishery interactions with northern fur seals. NMFS is actively pursuing research on northern fur seals to help us understand the reasons for the decline and potential threats to the population. The research projects investigate a broad range of topics related to fisheries interactions around the Pribilof Islands, including studies to quantify area-specific food habits and animal conditions, describe foraging behavior in different environments, delineate foraging habitats, and model habitat suitability in relation to fur seals and their overlap with commercial fisheries.

Comment 90: Amendment 91 would allow more salmon to be caught as bycatch in a single year than would enter into the Canadian portion of the Yukon River system in any given year's healthy run. This is an insult to Canadian First Nations. The Pacific Salmon Treaty and First Nation tribes are ignored even though they are severely impacted.

Response: The substantive issues involving Chinook salmon bycatch on the Canadian portion of the Yukon River and the Pacific Salmon Treaty were considered in the development of Amendment 91. The EIS and RIR for this action (*see* **ADDRESSES**) recognize that Chinook salmon taken as bycatch in the pollock fishery originate from Alaska, the Pacific Northwest, Canada, and Asian countries along the Pacific Rim. Estimates vary, but more than half of the Chinook salmon may be destined for rivers in western Alaska including the Yukon River. The EIS and RIR address the substantive issues involving the portion of Chinook salmon taken as bycatch in the Bering Sea pollock fishery that originated from the Yukon River.

NMFS acknowledges that in 2007 and 2008, the United States did not meet the Yukon River escapement goals established with Canada by the Yukon River Agreement. However, in 2009 the United States exceeded these escapement goals, allowing for harvest sharing between the United States and Canada.

Comment 91: The final rule should acknowledge the current contribution that the VRHS provides to Chinook salmon bycatch reduction efforts, especially in low abundance years when the challenge will be to keep bycatch as far below the PSC limit as is practicable. The preamble does not explain that while the VRHS was in place in 2007, the highest bycatch year, bycatch likely would have been significantly higher without the VRHS. After 2007, major modifications were made to the VRHS that have clearly helped to keep Chinook salmon bycatch down in 2008, 2009, and 2010. Based on the performance from 2008 to 2010, the VRHS remains one of the most effective tools the industry has to keep Chinook salmon bycatch within acceptable levels.

Response: The RIR prepared for this action contains a complete description of the VRHS, its performance, and modifications since it was developed.

Comment 92: Industry efforts are ongoing to develop an effective salmon "excluder" that fishermen can incorporate into their trawl nets so as to enable salmon to escape from the nets unharmed. Ongoing experiments to design and perfect excluder devices are showing promise, and it is hoped that they, too, will make significant contributions to industry efforts to keep Chinook bycatch as low as practicable.

Response: NMFS acknowledges the comment.

Comment 93: Acknowledge the importance of salmon to ecosystems other than marine. Low Chinook salmon returns are not only bad for the people who depend on them for sustenance and income, but declining runs present substantial negative impacts to river systems, riparian habitat, upland watershed habitat, and the ocean nutrient conveyor belt.

Response: NMFS agrees and acknowledges the comment.

Comment 94: Chinook salmon bycatch in the Bering Sea pollock fishery may lead user groups to give up their way of life. If user groups cannot continue to catch more pollock and more salmon, they will starve and die.

Response: NMFS acknowledges the comment.

Tribal Consultation Issues

Comment 95: Tribes and their leaders were shut out of meaningful participation in the decision-making process. The Council limited Chinook salmon bycatch management options before any significant effort was made to involve Alaskan Native tribes. NMFS and Council staff's attempts at outreach and government-to-government tribal consultations were awkward, held too late in the process, and participation was limited. As a result, the analysis poorly characterized subsistence and its importance to rural user groups. It is evident by their actions that the majority of Council members paid no meaningful attention to the concerns of the tribes who all spoke with a strong and unified voice on this issue. Conversely, the Council meetings involved many pollock industry representatives and presentations.

Response: NMFS and the Council made significant efforts to involve Alaska Native tribes and western Alaska residents early in the process. As detailed in the EIS (*see* **ADDRESSES**), the Council conducted extensive outreach to Alaskan communities to explain this action, the supporting analysis, and the Council decision-making process. In conjunction with the Council outreach, NMFS consulted with interested Alaska Native representatives, as described in the Tribal Summary Impact Statement in the Classification section of this preamble.

In February 2007, the Council began developing this action by creating the Salmon Bycatch Workgroup. The Salmon Bycatch Workgroup had members that represented western Alaska, held public meetings, and developed the first draft of the alternative set. When NMFS started the EIS scoping process on December 28, 2007, NMFS initiated the consultation process for this action by mailing letters to Alaska tribal governments, Alaska Native corporations, and related organizations. These letters provided information about the proposed action and the EIS process, and solicited consultation and coordination with Alaska Native representatives. The primary purpose of scoping is to obtain public comments on the range of alternatives and issues to analyze. Based on scoping, public testimony, and the workgroup recommendations, the Council refined the range of alternatives and developed the analysis over seven Council meetings, finalizing the alternative set and recommending the preferred alternative in April 2009.

Western Alaska residents commented that the Draft EIS and RIR poorly characterized subsistence and its importance to rural user groups. In response to these comments, NMFS, the Council, and the State of Alaska made significant improvements to this analysis for the final EIS and RIR (*see* **ADDRESSES**). This additional analysis was presented to the Council before they took final action to recommend Amendment 91.

Comment 96: Subsistence users of the Yukon River, the vast majority of whom are Alaska Native and have the lowest per capita income in the United States, are clearly bearing a disproportionately high adverse environmental impact under Amendment 91. Under the concept of Environmental Justice, why does Amendment 91 result in tribal subsistence users bearing virtually all of the consequences resulting from past, present, and future wasteful bycatch by the pollock fleet? This violates all measures of fairness and fails to satisfy any consideration of environmental justice. The pollock fleet can best afford to make sacrifices in order to accomplish meaningful reductions in Chinook salmon bycatch.

Response: NMFS acknowledges the comment. The EIS prepared for this action analyzes the environmental justice impacts of this action (*see* **ADDRESSES**).

Comment 97: NOAA conducted only one true tribal consultation, with the Bering Straits tribes. This consultation occurred with only a small fraction of the Alaska federally recognized tribes affected by Amendment 91. NOAA failed to formally respond to or follow-

up on the concerns raised by the tribes in the single inadequate tribal consultation that was held.

Response: NMFS disagrees. NMFS conducted a consultation with every tribe that requested a consultation. As detailed in the Tribal Summary Impact Statement, below, NMFS held five consultations with fifteen Alaska Native tribes. Following the Nome consultation referenced by the commenter, NMFS addressed the concerns raised by the tribal representatives in written responses in the Comment Analysis Report, and amended the EIS analysis to reflect the concerns raised at the consultation.

Comment 98: We support NMFS' efforts to implement and refine its procedures for effective and adequate consultation and coordination with Alaska Native tribes.

Response: NMFS acknowledges this comment.

Comment 99: Fewer than 5 percent of the people who live in the Yukon River drainage have heard of the Council despite the FMP containing provisions for consulting with Alaska Natives and rural communities. During the April 2009 Council meeting, NMFS stated that the analysis for this action did not include freshwater information, even though salmon are anadromous. The Tanana Chiefs Conference, the Association of Village Council Presidents, the First Nations tribes of Canada, and the Office of Subsistence Management should have all been consulted regarding the declining salmon runs. Traditional ecological knowledge must be considered.

Response: The State of Alaska manages Chinook salmon fisheries and the EIS and RIR prepared for this action (*see* **ADDRESSES**) contain extensive information from the State of Alaska on Chinook salmon in-river abundance, fisheries, and management. ADF&G was a cooperating agency in preparing the EIS and the EIS relied on subsistence information from ADF&G's Office of Subsistence Management.

As explained in the EIS, the Council conducted extensive outreach to Alaskan communities to explain this action, the supporting analysis, and the Council decision-making process. In conjunction with the Council's outreach activities, NMFS consulted with interested Alaska Native representatives, as described in the Tribal Summary Impact Statement.

Comment 100: We applaud NMFS efforts to incorporate more personal meetings with tribal representatives. We recommend that NMFS establish an Alaska Native Tribal Liaison position for the purpose of further implementing and conducting NMFS consultation and coordination policy.

Response: NMFS acknowledges this comment. NMFS continues to encourage the participation of rural Alaska in the decision-making processes and strives to improve our tribal consultation and outreach efforts. NMFS is considering the recommendation to hire a tribal liaison as we assess the resources needed to meet tribal consultation requests and responsibilities under Executive Order 13175.

Comment 101: Tribal leaders, even those representing regions with 20, 30, and 50 tribes, were allowed an impossibly scant three minutes of time during the "public" comment part of the April 2009 meeting to express their concerns and positions. Pollock fishery representatives, on the other hand, were allowed several hours to present their incentive plans.

Response: During the April 2009 Council meeting, public testimony was limited to 4 minutes for associations and organizations and 2 minutes for individuals. Because the preliminary preferred alternative included a provision to allow the pollock industry to develop incentive plan agreements, and the Council's selection of a final preferred alternative depended on the ability to understand what such agreements may entail, the Council requested that each primary sector of the pollock industry provide a presentation on the progress and potential content of the incentive plans as part of the background presentations prior to public comment. These presentations assisted the Council and the public in understanding how the incentive plan agreements may be developed before making a decision.

Comment 102: The Secretary of Commerce has a trust obligation to protect the opportunity for Alaska Natives to continue their subsistence way of life.

Response: NMFS agrees that the Federal Government has a trust responsibility to protect the Alaskan Natives' rights of subsistence hunting and fishing. However, the environmental statutes under which the Council and NMFS act prescribe a solicitous stance toward the environment. As a result, where the government acts responsibly regarding the environment, it implements and protects the parallel concerns of Native Alaskans. In this instance, the Council and NMFS are taking action to minimize the Chinook salmon bycatch to the extent practicable. This action is intended to protect an important natural resource and therefore is also, inherently, intended to protect Alaskan Natives' rights of subsistence fishing.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendment 91 and this final rule are consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

Final Environmental Impact Statement (EIS) and Final Regulatory Impact Review (RIR)

An EIS and RIR were prepared to serve as the central decision-making documents for the Secretary of Commerce to approve, disapprove, or partially approve Amendment 91, and for NMFS to implement Amendment 91 through Federal regulations (*see* **ADDRESSES**). The EIS was prepared to disclose the expected impacts of this action and its alternatives on the human environment. The RIR for this action was prepared to assess the costs and benefits of available regulatory alternatives.

Final Regulatory Flexibility Analysis (FRFA)

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

NMFS published the proposed rule on March 23, 2010 (75 FR 14016) with comments invited through May 7, 2010. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here.

NMFS received 71 letters of public comment on Amendment 91 and the proposed rule. None of these comments addressed the IRFA. NMFS received comment letters on Amendment 91 and the proposed rule from five of the six CDQ groups, which compose all the small entities directly affected by this action. In total six unique comments were received from the small entities. Two of these comments (17 and 34) resulted in revisions to the final rule from the proposed rule, while the other three (35, 36, 37, and 39) resulted in

further clarification in the preamble to the final rule.

Number and Description of Small Entities Regulated by This Action

This action applies only to those entities that participate in the directed pollock trawl fishery in the Bering Sea. These entities include the AFA-affiliated pollock fleet and the six CDQ groups that receive allocations of Bering Sea pollock.

The Regulatory Flexibility Act (RFA) requires consideration of affiliations among entities for the purpose of assessing if an entity is small for RFA purposes. The AFA pollock cooperatives are a type of affiliation. All of the non-CDQ entities directly regulated by this action were members of AFA cooperatives in 2008 and, therefore, NMFS considers them "affiliated" large (non-small) entities for RFA purposes.

Due to their status as non-profit corporations, the six CDQ groups are identified as "small" entities under the Small Business Administration's (SBA) guidelines. This action directly regulates the six CDQ groups, and NMFS considers the CDQ groups to be small entities for RFA purposes. As described in regulations implementing the RFA (13 CFR 121.103), the CDQ groups' affiliations with other large entities do not qualify them as large entities. Revenue derived from groundfish allocations and investments in BSAI fisheries enable these non-profit corporations to better comply with the burdens of this action, when compared to many of the large AFA-affiliated entities. Nevertheless, the only small entities that are directly regulated by this action are the six CDQ groups.

No duplication, overlap, or conflict between this action and existing Federal rules has been identified.

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. "Significant alternatives" are those that achieve the stated objectives for the action, consistent with prevailing law, with potentially lesser adverse economic impacts on small entities, as a whole.

NMFS approved and is implementing Amendment 91 following recommendations by the Council. The EIS, RIR, and FRFA for this action considered four alternative management actions to the preferred alternative.

As the "preferred alternative," Alternative 5 constitutes the "final rule." The remaining four alternatives (in various combinations of options and suboptions) constitute the suite of "significant alternatives," under the final rule, for RFA purposes. Each is addressed below. Please refer to section 2.5 of the EIS for the detailed impacts analyses. Data on cost and operating structure within the CDQ sector are unavailable, so a wholly quantitative evaluation of the size and distribution of burdens cannot be provided. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo alternative (Alternative 1), the Chinook Salmon Savings Area, established by Amendment 84 to the FMP, creates separate non-CDQ and CDQ Chinook salmon PSC limits. NMFS closes the Chinook Salmon Savings Area upon attainment of the non-CDQ Chinook salmon PSC limit. The CDQ Program receives allocations of 7.5 percent of the Chinook salmon PSC limit (or 2,175 Chinook salmon) as PSQ reserve. NMFS further allocates PSQ reserves among the six CDQ groups, based on a recommendation by the State of Alaska in 2005. The State of Alaska recommended that the percentage allocation of Chinook salmon PSQ and non-Chinook salmon PSQ among the CDQ groups be the same as the CDQ groups' percentage allocations of pollock. The percentage allocation of Chinook salmon PSQ by CDQ group is as follows: Aleutian Pribilof Island Community Development Association (APICDA) 14 percent, Bristol Bay Economic Development Corporation (BBEDC) 21 percent, Central Bering Sea Fisherman's Association (CBSFA) 5 percent, Coastal Villages Region Fund (CVRF) 24 percent, Norton Sound Economic Development Corporation (NSEDC) 22 percent, and Yukon Delta Fisheries Development Association (YDFDC) 14 percent. Allocations of salmon PSQ to the CDQ groups are transferable among the CDQ groups.

Unless exempted because of participation in the VRHS ICA, a CDQ group is prohibited from directed fishing for pollock in the Chinook Salmon Savings Area when the Chinook salmon PSQ is reached. As described earlier in the preamble to this final rule, the VRHS ICA provides real-time salmon PSC information, so that the fleet can avoid areas of high Chinook salmon interception rates. The fleet voluntarily started the VRHS in 2002 for Chinook salmon, and in 2008 NMFS approved the regulations implementing Amendment 84 to the BSAI FMP. In 2008 and 2009, all CDQ groups were voluntarily participating in an ICA, so they were exempt from the closure of the Chinook Salmon Savings Area.

Alternative 1 would likely impose the least burden on the CDQ groups, because it does not impose a Chinook salmon PSC limit that could prevent the full harvest of their respective pollock allocations. While the annual reports indicate that the VRHS ICA has reduced Chinook salmon encounter rates compared to what they would have been without the ICA, the highest historical Chinook salmon bycatch occurred in 2007, when the ICA was in effect under an exempted fishing permit. This high level of bycatch indicates that the status quo management measures, despite their giving the pollock fleet the tools to reduce salmon bycatch, contain no effective upper limit on the amount of Chinook salmon bycatch taken in the fishery. NMFS and the Council remain concerned that the status quo management has the potential for high amounts of Chinook salmon bycatch as experienced in 2007.

The hard cap alternative (Alternative 2) would establish an upper limit to Chinook salmon bycatch in the pollock fishery. A range of suboption caps, from 29,323 to 87,500 Chinook salmon, were considered, based on various averages of Chinook salmon bycatch in the pollock fishery over a range of historical year combinations from 1997 through 2006. Analysis in sections 6.10.3 and 7.3 of the RIR examined the potential impacts on CDQ groups over this range. All Chinook salmon caught by vessels participating in the pollock fishery would accrue toward the cap. Under this alternative, upon reaching a Chinook salmon PSC limit, all directed pollock fishing would stop, regardless of potential forgone pollock harvests.

As described in the EIS section 2.2, this alternative includes several different options for management of a PSC limit, including separate PSC limits for the CDQ Program and the remaining AFA sectors, and hard caps divided by season, by sector, or a combination of both. In addition, the Council included an option to allow small entities (*i.e.,* CDQ groups) and non-CDQ groups to transfer Chinook PSC allocations among sectors, between the A and B seasons, or a combination of both, that would allow small entities more flexibility to harvest the full TAC in high Chinook salmon encounter years.

Regardless of the hard cap level or allocation option chosen, the

establishment of an upper limit on the amount of Chinook salmon bycatch in the pollock fishery would require participants in the CDQ Program to stop directed fishing for pollock if a hard cap were reached, because further directed fishing for pollock would likely result in exceeding the Chinook salmon hard cap. As the analysis in section 6.10 of the RIR demonstrates, the lower the hard cap selected, the higher the probability of a fishery closure and potential for forgone pollock revenues to the CDQ groups.

Although this alternative would have established an upper limit to Chinook salmon bycatch, the hard cap alternative alone would fail to promote Chinook salmon avoidance during years of low salmon encounter rates and could result in a loss of revenues to CDQ groups, due to the closure of the fishery before the TAC has been harvested. Additionally, this alternative could create a race for Chinook salmon bycatch, similar to a race for fish in an open access fishery, which could increase the likelihood of wasteful fishing practices, a truncated directed fishing season, and forgone pollock harvest. The final rule retains components of Alternative 2 that will limit the burden on the small entities and further increase the flexibility for small entities through an IPA to minimize Chinook bycatch, to the extent practicable, at all levels of salmon or pollock abundance, while establishing an upper limit on Chinook salmon bycatch. Furthermore, the Council rejected Alternative 2 in partial response to public testimony described below.

During public comment, the Council received varying perspectives from CDQ participants on the costs and benefits of the range of PSC limits under consideration. NMFS received written comments from three of the six CDQ groups. While two CDQ groups (BBEDC and YDFDA) argued for a lower limit than this final rule provides, it was asserted by some, (including members of CVRF communities) that a hard cap higher than 68,000 Chinook salmon would increase the possibility that they could both harvest their full pollock allocation, under AFA, and receive full royalty and profit sharing payments from those allocations. The importance of the pollock resource, as a source of revenue for these small entities, indicates that any loss of pollock catch represents an increased economic burden on the CDQ groups (small entities). Public comment from CDQ members revealed the complexity of the issue for CDQ groups and communities. Although CDQ communities derive revenue from pollock and other BSAI fisheries, many of these CDQ stakeholders also depend on sustainable Chinook salmon runs for subsistence, cultural, and spiritual practices; therefore, this issue is not strictly a matter of finances. The Council ultimately rejected Alternative 2 in recognition that a hard cap alone would not achieve the Council's objectives for this action.

The modified area triggered closure alternative (Alternative 3) is similar to the status quo in that regulatory time and area closures would be invoked when specified Chinook salmon PSC limits are reached, but NMFS would remove the VRHS ICA exemptions to the closed areas. This alternative would incorporate new cap levels for triggered closures, sector allocations, and transfer provisions and could impose a lower burden on the CDQ groups than the preferred alternative. If triggered, NMFS would close only the seasonal areas, described in section 2.3 of the EIS, to directed pollock fishing. This alternative would not necessarily prevent small entities from the full harvest of their pollock TAC, because fishing effort outside of the closed areas could continue until the fishing season ended.

While Alternative 3 appears to reduce the economic impacts of forgone pollock revenue on small entities, when compared to the hard cap alternative, it does not provide any incentive to minimize Chinook salmon bycatch below the trigger amount. This alternative would shift the fleet's fishing effort to areas that may (or, as experienced in recent seasons, may not) have a lower risk of Chinook salmon encounters, but would not achieve the Council's objectives to promote Chinook salmon avoidance at the vessel level, establish a maximum limit on Chinook salmon bycatch in the pollock fishery, or hold the industry accountable for minimizing Chinook salmon bycatch.

At its June 2008 meeting, the Council developed a preliminary preferred alternative (Alternative 4) that contains components of Alternatives 1 through 3. Alternative 4 would set a hard cap for all vessels participating in the pollock fisheries and includes provisions for a voluntary ICA that must encourage Chinook salmon avoidance, at all levels of pollock and Chinook salmon abundance and encounter rates. This alternative would minimize the burden on small entities by setting a relatively high PSC limit (68,392 Chinook salmon), allowing participants in an ICA to share the burden of reducing Chinook bycatch, and allowing sector level PSC allocation transfers.

PSC allocations under Alternative 4 would limit the burden on the small entities by increasing their annual allocation of the Chinook salmon PSC limit. Under component 2 of this alternative, a sector's allocation of Chinook salmon bycatch would be calculated at 75 percent historical bycatch and 25 percent AFA pollock quota, with allowances for the CDQ sector. Estimates of historic bycatch in the CDQ sector were based on lower bycatch hauls when compared to non-CDQ sectors, due in part to agreement with the catcher/processor fleet contracted to harvest pollock on behalf of the CDQ sector. These historical bycatch estimates would have resulted in a lower initial allocation of Chinook salmon to CDQ groups, potentially increasing forgone revenue loss for small entities. Therefore, component 2 estimates the historic CDQ bycatch rates by blending CDQ bycatch rates with those of sectors harvesting pollock on behalf of the CDQ groups. The resulting higher PSC allocations would decrease the probability of forgone pollock revenue and the financial burden of this action on the CDQ groups. NMFS provides a description of the sector allocation in section 2.4 of the EIS (*see* **ADDRESSES**).

During public comment on the Draft EIS, a different sector allocation was proposed to component 2 of Alternative 4. The suggested allocation would further reduce the burden on the small entities by allocating Chinook salmon based on 25 percent history and 75 AFA pollock allocation. Such an allocation would further benefit CDQ groups by increasing the PSC allocations to the CDQ groups above the amount provided under component 2 of Alternative 4. The Council considered and rejected this suggestion because such an allocation would not adequately represent the different fishing practices and patterns each sector utilizes to fully harvest their pollock allocations.

Despite the advantages of Alternative 4, the Council did not recommend this alternative, noting that it failed to meet the Chinook salmon conservation objective of this action by setting too high a PSC limit and by not establishing a performance standard to promote and ensure that the pollock fishery minimized Chinook salmon bycatch to the extent practicable. However, by unanimous vote, the Council selected a preferred alternative that retained component 2 from Alternative 4, which is designed to reduce the economic burden on the CDQ groups.

The preferred alternative (Alternative 5), which constitutes the "final action" under this element of the FRFA, reflects

the least burdensome of management structures available, in terms of directly regulated small entities, while fully achieving the conservation and management purposes consistent with applicable statutes. As described elsewhere in the final rule for this action, Alternative 5 combines a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch, to the extent practicable, in all years and should result in a greater reduction of Chinook salmon bycatch over time than the PSC limits and performance standard.

The uncertainty and variability in Chinook salmon bycatch led the Council and NMFS to create an innovative and comprehensive management program, which limits the burden on CDQ groups through performance rather than design standards. Alternative 5 establishes a system of transferable PSC allocations and a performance standard to provide CDQ groups with the flexibility to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (*e.g.,* pollock TAC, market conditions, area closures associated with other rules, gear restrictions, climate and oceanographic change).

NMFS decided to implement the Council's recommended alternative because it best balances a suite of management measures that enable NMFS to manage Chinook salmon bycatch in the pollock fishery, while meeting all statutory, regulatory, and national policy requirements, goals, and objectives. Following a comprehensive review of the relevant environmental, economic, and social consequences of the alternatives, NMFS did not identify any additional alternatives to those analyzed in the EIS, RIR, and the FRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. The EIS section 2.6, contains a detailed discussion of alternatives considered and eliminated for further analysis (*see* **ADDRESSES**).

Recordkeeping and Reporting Requirements

In addition to revising some existing requirements, this rule will add recordkeeping and reporting requirements needed to implement the preferred alternative including those related to—

- Reporting Chinook salmon bycatch by vessels directed fishing for pollock in the Bering Sea;
- Applications to transfer Chinook salmon PSC allocations to another eligible entity;
- Development and submission of proposed IPAs and amendments to approved IPAs; and
- An annual report from each IPA representative documenting information and data relevant to the Chinook salmon bycatch management program.

The CDQ groups enter contracts with partner vessels to harvest their pollock allocations. Many of these vessels are at least partially owned by the CDQ groups. Although the accounting of Chinook salmon bycatch by partner vessels fishing under CDQ allocations will accrue against each respective CDQ group's seasonal PSC limit, most of the recordkeeping, reporting, and compliance requirements in the final rule apply to the vessels harvesting pollock, as well as the processors processing pollock delivered by catcher vessels. For example, under existing requirements at § 679.5, landings and production reports that include information about Chinook salmon bycatch are required to be submitted by processors.

NMFS clarifies that, in the future, if a CDQ group chooses to have pollock CDQ delivered to a shoreside processing plant, the catcher vessel used to harvest the pollock CDQ would need to designate the trip as a CDQ trip and comply with the retention and observer coverage requirements for catcher vessels, and the pollock would have to be delivered to a processor with an approved CMCP. These steps will ensure that all salmon bycatch from the pollock CDQ fisheries are properly counted and reported.

The CDQ groups already receive transferable Chinook and non-Chinook salmon PSQ allocations and have received such allocations under the CDQ Program since 1999. Therefore, NMFS will not require CDQ groups to apply for recognition as entities eligible to receive transferable Chinook salmon PSC allocations. The CDQ groups are already authorized to transfer their salmon PSQ allocations to and from other CDQ groups, using existing transfer applications submitted to NMFS.

New under this action is the authorization for the CDQ groups to transfer Chinook salmon PSC allocations to and from AFA entities, outside of the CDQ Program, including the AFA inshore cooperatives and the entities representing the AFA catcher/processor sector and the AFA mothership sector. Because of this new feature, CDQ groups will use a new application form to transfer Chinook PSC; all other transfers by CDQ groups will continue to be accomplished using the CDQ or PSQ Transfer Application. The existing application has been revised to provide this instruction.

Participation in an IPA is voluntary, but it is necessary to receive transferable allocations of a portion of the 60,000 Chinook salmon PSC limit. Therefore, it is likely that the CDQ groups will participate in one or more IPAs. A CDQ group may participate in an IPA with vessel owners from other AFA sectors, or the CDQ groups may develop an IPA that applies only to CDQ groups and vessels fishing on behalf of the CDQ groups. Each vessel harvesting pollock CDQ on behalf of a CDQ group must be listed in an approved IPA in which the CDQ group also is a participant, as required by § 679.21(f)(12)(ii)(C). If a CDQ group participates in an IPA, it will share the costs of developing and managing the IPA and meeting the reporting requirements. However, these costs are offset by the increased allocation of Chinook salmon PSC for IPA participants.

The professional skills necessary to prepare the reporting and recordkeeping requirements that will apply to the CDQ groups under this action include the ability to read, write, and understand English; the ability to use a computer and the Internet to submit electronic transfer request applications; and the authority to take actions on behalf of the CDQ group. Each of the six CDQ groups has executive and administrative staffs capable of complying with the reporting and recordkeeping requirements of this action and the financial resources to contract for any additional legal or technical expertise that they require to advise them.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm*) to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (*see* **ADDRESSES**).

Tribal Summary Impact Statement (E.O. 13175)

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the

responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

Pursuant to Executive Order 13175, NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis. Specifically, Executive Order 13175 requires Federal agencies to: (1) Regularly consult and collaborate with Indian tribal governments and Alaska Native corporations in developing Federal regulatory practices that significantly or uniquely affect their communities; (2) reduce the imposition of unfunded mandates on Indian tribal governments; and (3) streamline the applications process for and increase the availability of waivers to Indian tribal governments.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain: (1) A description of the extent of the agency's prior consultation with tribal officials; (2) a summary of the nature of their concerns; (3) a statement of the extent to which the concerns of tribal officials have been met; and (4) the agency's position supporting the need to issue the regulation.

A Description of the Extent of the Agency's Prior Consultation With Tribal Officials

On December 28, 2007, when NMFS started the EIS scoping process for this action, NMFS mailed letters to Alaska tribal governments, Alaska Native corporations, and related organizations ("Alaska Native representatives"). The letter provided information about the proposed action, the EIS process, and solicited consultation and coordination with Alaska Native representatives. NMFS received 12 letters providing scoping comments from representatives of tribal governments and Alaska Native Corporations. These comments were summarized and included in the scoping report available on the NMFS Alaska Region Web site (*see* **ADDRESSES**). Additionally, a number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during Council outreach meetings on Amendment 91 and at the numerous Council meetings at which Amendment 91 was discussed.

Once the Draft EIS was released on December 5, 2008, NMFS sent another letter to Alaska Native representatives announcing the release of the document and soliciting comments concerning the scope and content of the Draft EIS. The letter included a copy of the executive summary of the Draft EIS and provided information on how to obtain a printed or electronic copy of the Draft EIS. NMFS also mailed 23 copies of the Draft EIS to the Alaska Native representatives who had requested a copy or provided written comments to NMFS during scoping. NMFS received 14 letters of comment on the Draft EIS from representatives of tribal governments, tribal organizations, or Alaska Native corporations. These comments were summarized and responded to in the Comment Analysis Report (CAR) in Chapter 9 of the EIS and the comment letters are posted on the NMFS Alaska Region Web site (*see* **ADDRESSES**).

NMFS conducted tribal consultations at the request of representatives from the following federally recognized tribes: The Nome Eskimo Community; the Chinik Eskimo Community (representing the village of Golovin); the Stebbins Community Association; the Native Village of Unalakleet; the Native Village of Kwigillingok; the Native Village of Kipnuk; the Alakanuk Tribal Council; the Native Village of Koyuk; the Native Village of Elim; the Native Village of Gambell; Native Village of Savoonga; Saint Michael; Shaktoolik; King Island; and the Native Village of Eyak.

NMFS held a tribal consultation in Nome, Alaska, on January, 22, 2009, in conjunction with a Council outreach meeting on Chinook salmon bycatch. Consulting in person with NMFS in Nome were representatives of the Nome Eskimo Community, the Chinik Eskimo Community, and the Native Village of Elim. Representatives of the Stebbins Community Association and the Native Village of Unalakleet participated by telephone. Council staff provided information on the Draft EIS, the alternatives, and the schedule for Council action. As part of the consultation, NMFS staff provided additional information and listened to the concerns and issues raised by the tribal representatives. The Nome Eskimo Community submitted a letter to NMFS with its comments during the tribal consultation. NMFS considered and responded to these comments in the CAR.

NMFS also held a tribal consultation teleconference on March 17, 2009, with the Native Village of Kwigillingok and the Bering Sea Elders Advisory Group, which has 37 tribes as members. The Regional Administrator provided information about the upcoming final action by the Council and the Draft EIS comment period and listened to the concerns and issues raised by the tribal representatives. The concerns expressed in the consultation were provided in a letter from the Bering Sea Elders Advisory Group.

On October 19, 2009, NMFS held a tribal consultation teleconference with the Alakanuk Tribal Council and the Native Village of Kipnuk. The Regional Administrator provided information on the Chinook and chum salmon bycatch in the Bering Sea in 2009 and listened to the concerns and issues raised by the tribal representatives.

Following the release of the EIS and RIR on December 7, 2009, NMFS sent another letter to Alaska Native representatives announcing the release of the EIS and providing information on how to participating in the rulemaking process. These letters included a copy of the EIS and RIR executive summary and provided information on how to obtain a printed or electronic copy of the EIS and RIR. NMFS also mailed 28 copies of the EIS and RIR to the Alaska Native representatives who requested a copy or who had provided written comments to NMFS. NMFS received one comment from an Alaska Native organization on the EIS that was summarized and responded to in the ROD (*see* **ADDRESSES**).

On October 13, 2009, NMFS received a request from the Native Village of Unalakleet for tribal consultation on a number of fishery management issues regarding the Bering Sea. On February 16, 2010, NMFS conducted a tribal consultation in Unalakleet, Alaska, that included tribal representatives from the Native Village of Unalakleet, the Native Village of Koyuk, Stebbins Community Association, Native Village of Elim, the Native Village of Gambell, the Native Village of Savoonga, Saint Michael, Shaktoolik, and King Island. Among other issues, Amendment 91, general rulemaking and tribal consultation processes, salmon research, and fisheries bycatch management were discussed. The report NMFS prepared on this consultation is available on the NMFS Alaska Region Web site (*see* **ADDRESSES**).

On March 24, 2010, NMFS continued the consultation process by sending another letter to all Alaska Native representatives when the Notice of Availability for Amendment 91 and the proposed rule were published in the **Federal Register**. The letter included a copy of these documents and notified representatives of the opportunity to comment and consult. NMFS received

45 letters of comment on Amendment 91 and the proposed rule from tribal members and representatives of tribal governments, tribal organizations, or Alaska Native corporations. The comment summaries and NMFS' responses are provided in this preamble under Response to Comments.

On May 18, 2010, NMFS held a tribal consultation teleconference with the Native Village of Eyak. The Regional Administrator provided information on Amendment 91 and Chinook salmon and listened to the concerns and issues raised by the tribal representatives.

A Summary of the Nature of Tribal Concerns

The concerns expressed in consultations and reflected in written comments from tribal representatives and members center on four themes. First, Chinook salmon is vitally important to tribal members, and they suffer great hardships when Chinook salmon abundance is low. Second, tribal representatives attribute low Chinook salmon in-river returns directly to bycatch in the Bering Sea pollock fishery. Third, tribal members want Chinook salmon bycatch greatly curtailed by a hard cap of between zero and 32,000 Chinook salmon. Fourth, NMFS should improve its consultation process and include tribal perspectives early in decision-making. The Alaska tribal representatives' specific concerns raised during the consultations before the EIS was finalized were summarized and responded to in the EIS (*see* **ADDRESSES**). The Alaska tribal representatives' specific concerns raised after the EIS was published are addressed in the Response to Comments in this final rule.

A Statement of the Extent to Which the Concerns of Tribal Officials Have Been Met

One of the primary factors in initiating this action was concern over the potential impacts of Chinook salmon bycatch in the Bering Sea pollock fishery on the return of Chinook salmon to western Alaska river systems and the recognition of the importance of Chinook salmon to the people in western Alaska. While the final program is not the program advocated by many Alaska Native representatives, it will minimize bycatch to the extent practicable.

To address their first concern that the draft analysis poorly characterized the subsistence fishery for Chinook salmon and its importance to rural user groups, NMFS, the Council, and the State of Alaska made significant improvements to the final EIS and RIR analysis to accurately document the importance of the subsistence way of life. The analysis includes the best available information from the ADF&G Office of Subsistence and current literature, and the traditional knowledge shared with NMFS and the Council in consultations and comments. This additional analysis was presented to the Council before it took final action to recommend Amendment 91 and was the analysis used by the agency to approve Amendment 91.

To address the second concern, the EIS applied the best available scientific information to conduct an adult equivalent analysis to determine the impacts of the pollock fishery on the annual returns of Chinook salmon to the river systems in Western Alaska. As explained in the EIS analysis, the degree to which levels of bycatch are related to declining returns of Chinook salmon is unknown. While Chinook salmon bycatch in the Bering Sea pollock fishery may be a contributing factor in the decline of Chinook salmon, the EIS analysis shows that the absolute numbers of the ocean bycatch that would have returned to western Alaska are expected to be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook salmon bycatch. Although the reasons for the decline of Chinook salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely caused poor survival of Chinook salmon.

NMFS considered the recommended hard caps from tribal members, and the most recommended limit of 32,500 Chinook salmon was analyzed in the EIS and RIR. As discussed above, NMFS has determined Amendment 91 is a better program than a hard cap alone because it includes a mechanism, the IPA, that provides incentives for pollock fishing vessels to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance in all years. Amendment 91 will achieve the conservation objectives of minimizing Chinook salmon bycatch to the extent practicable, but includes management measures that provide the fleet the flexibility to harvest the pollock TAC within the specified Chinook salmon PSC limits.

NMFS and the Council have made great efforts to conduct outreach, communication, and consultations with Alaska Native tribes, organizations, Alaska Native corporations, and communities. NMFS and the Council made significant efforts to involve Alaska Native tribes and western Alaska residents early in the process of developing Amendment 91. As explained in the EIS, the Council conducted extensive outreach to Alaskan communities to explain this action, the supporting analysis, and the Council decision-making process. In conjunction with the Council outreach, NMFS provided information to all tribes at each step in the process and consulted with interested Alaska Native representatives, as described in "A Description of the Extent of the Agency's Prior Consultation with Tribal Officials."

In response to the tribal concerns, NMFS and the Council have also taken steps to improve these processes. In November 2009, NMFS conducted a workshop with interested tribal officials on tribal consultations and has responded to the recommendations made at that workshop. More information on NMFS' tribal consultation process is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/tc/*). The Council also created the Rural Community Outreach Committee to develop outreach plans for specific Council actions and educational workshops for rural communities on environmental law and the Council process. More information on the Council's outreach efforts is available on the Council's Web site (*http://alaskafisheries.noaa.gov/npfmc/default.htm*).

NMFS' Position Supporting the Need To Issue the Regulation

This final rule is needed to implement Amendment 91, a complex and innovative program to minimize bycatch to the extent practicable in the pollock fishery. This final rule is also needed to implement increased observer coverage and ensure that every salmon caught in the pollock fishery is counted so that NMFS has accurate salmon bycatch data. NMFS is also expanding the biological sampling to improve data on the origins of salmon caught as bycatch in the pollock fishery.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB). The collections are listed below by OMB control number.

OMB Control No. 0648–0213

Public reporting burden per response is estimated to average 30 minutes for

eLandings Catcher/Processor Trawl Gear Electronic Logbook.

OMB Control No. 0648–0393

Public reporting burden per response is estimated to average 8 hours for the Application for Approval as an Entity to Receive Transferable Chinook Salmon PSC Allocation form and 15 minutes for the Application for Transfer of Chinook Salmon PSC Allocations.

OMB Control No. 0648–0515

Public reporting burden per response is estimated to average 20 minutes for the eLandings Catcher/Processor or Mothership Production Report.

This rule also contains new collection-of-information requirements subject to the PRA. These information collections have been submitted to and approved by the OMB.

OMB Control No. 0648–0609

Public reporting burden per response is estimated to average 30 minutes for the Groundfish/Halibut CDQ and Prohibited Species Quota (PSQ) Transfer Request.

OMB Control No. 0648–0610

Public reporting burden per response is estimated to average 40 hours for the AFA CMCP; 5 minutes for the Inspection Request for Inshore CMCP; 8 hours for the CMCP Addendum; 1 hour for the Electronic Monitoring System; and 2 hours for the Inspection Request for Electronic Monitoring System.

OMB Control No. 0648–0401

Public reporting burden per response is estimated to average 40 hours for the Application for Proposed Chinook Incentive Plan Agreement (IPA); 8 hours for the Chinook IPA annual report; 40 hours for the initial non-Chinook Inter-Cooperative Agreement (ICA); 8 hours for the non-Chinook ICA annual report; 12 hours the annual AFA cooperative report; 5 minutes for the IPA agent of service (this item will be removed because it is part of the ICA); and 5 minutes for the ICA agent of service (this item will be removed because it is part of the IPA).

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to (202) 395–7285.

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.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 13, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, NMFS amends 15 CFR Chapter IX and 50 CFR Chapter VI as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry "50 CFR",

■ a. Remove entries for "679.28(b), (c), (d), and (e)" and "679.28(g)"; and

■ b. Add entries in alphanumeric order for "679.21(f) and (g)"; and "679.28(b), (c), (d), (e), (g), and (j)".

The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648–)
* * * * * * *	
50 CFR	
* * * * * * *	
679.21(f) and (g)	–0393 and –0608.
* * * * * * *	
679.28(b), (c), (d), (e), (g), and (j)	–0610.
* * * * * * *	

TITLE 50—WILDLIFE AND FISHERIES

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 4. In § 679.2,

■ a. Remove the definitions for "Bycatch rate", "Chinook Salmon Savings Area of the BSAI", "Fishing month", "Observed or observed data", and "Salmon bycatch reduction intercooperative agreement (ICA)";

■ b. In the definition for "Fishing trip", revise paragraph (1) introductory text, paragraph (1)(i) introductory text, and paragraph (1)(ii), and add new paragraph (6);

■ c. Add new definitions for "Agent for service of process", "Chinook salmon bycatch incentive plan agreement (IPA)", "Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)", and "Observed".

The addition and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Agent for service of process means, for purposes of § 679.21(f), a person appointed by the members of an AFA inshore cooperative, a CDQ group, or an entity representing the AFA catcher/processor sector or the AFA mothership sector, who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the inshore cooperative, the entity representing the catcher/processor sector, the entity representing the mothership sector, or the entity representing the cooperative or a CDQ group and owners of all vessels directed fishing for pollock CDQ on behalf of that CDQ group.

* * * * *

Chinook salmon bycatch incentive plan agreement (IPA) is a voluntary private contract, approved by NMFS under § 679.21(f)(12), that establishes incentives for participants to avoid Chinook salmon bycatch while directed fishing for pollock in the Bering Sea subarea.

* * * * *

Fishing trip means:

(1) *Retention requirements (MRA, IR/IU, and pollock roe stripping) and R&R requirements under § 679.5.*

(i) *Catcher/processors and motherships.* An operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until any of the following events occur: * * *

(ii) *Catcher vessels.* An operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

* * * * *

(6) *For purposes of § 679.7(d)(9) for CDQ groups and § 679.7(k)(8)(ii) for AFA entities,* the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel.

* * * * *

Non-Chinook salmon bycatch reduction intercooperative agreement (ICA) is a voluntary non-Chinook salmon bycatch avoidance agreement, as described at § 679.21(g) and approved by NMFS, for directed pollock fisheries in the Bering Sea subarea.

* * * * *

Observed means observed by one or more observers (see subpart E of this part).

* * * * *

■ 5. In § 679.5,

■ a. Revise paragraphs (c)(4)(i)(B), (c)(4)(ii)(A)(*1*), (c)(6)(ii)(A), (e)(10)(iii)(M), (f)(1) introductory text, (f)(1)(iv), (f)(2)(iii)(B)(*1*), (f)(7) introductory text, and paragraph (f)(7)(i); and

■ b. Add paragraph (f)(1)(vii).

The revisions and additions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(4) * * *

(i) * * *

(B) Except as described in paragraph (f)(1)(iv) or (vii) of this section, the operator of a catcher/processor that is required to have an FFP under § 679.4(b) and that is using trawl gear to harvest groundfish is required to use a combination of catcher/processor trawl gear DCPL and eLandings to record and report daily processor identification information, catch-by-haul landings information, groundfish production data, and groundfish and prohibited species discard or disposition data. Under paragraph (f)(1)(vii) of this section, the operators of AFA catcher/processors or any catcher/processor harvesting pollock CDQ are required to use an ELB and no longer report using a DCPL.

(ii) * * *

(A) * * *

DATA ENTRY TIME LIMITS, CATCHER VESSEL TRAWL GEAR

Required information	Time limit for recording
(*1*) Haul number, time and date gear set, time and date gear hauled, beginning and end positions, CDQ group number (if applicable), total estimated hail weight for each haul.	Within 2 hours after completion of gear retrieval, except that catcher vessels harvesting pollock CDQ in the BS and delivering unsorted codends to a mothership must record CDQ group number within 2 hours after completion of weighing all catch in the haul on the mothership.

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(6) * * *

(ii) * * *

DATA ENTRY TIME LIMITS, MOTHERSHIP

Required information	Record in		Time limit for recording
	DCPL	eLandings	
(A) All catcher vessel or buying station delivery information.	X	.....	Within 2 hours after completion of receipt of each groundfish delivery, except that the CDQ group number for catcher vessels harvesting pollock CDQ in the BS and delivering unsorted codends to a mothership must be recorded within 2 hours after completion of weighing all catch in the haul on the mothership.
* * * * * * *			

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(e) * * *

(10) * * *

(iii) * * *

(M) *PSC numbers*—(*1*) *Non-AFA catcher/processors and all motherships.* Daily number of PSC animals (Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs) by species codes and discard and disposition codes.

(*2*) *AFA and CDQ catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must enter daily the number of non-salmon PSC animals (Pacific halibut, king crabs, and Tanner crabs) by species codes and discard and disposition codes. Salmon PSC animals are entered into the electronic logbook as described in paragraphs (f)(1)(iv) and (v) of this section.

* * * * *

(f) * * *

(1) *Responsibility.* The operator of a vessel voluntarily using an ELB must notify the Regional Administrator by fax at 907–586–7465 to notify NMFS that the operator is using a NMFS-approved ELB instead of a DFL or DCPL, prior to participating in any Federal fishery.

* * * * *

(iv) *Catcher/processor trawl gear ELB.* Except as described in paragraph (f)(1)(vii) of this section, the operator of a catcher/processor using trawl gear may use a combination of a NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish information. In the ELB, the operator may enter processor identification information and catch-by-haul information. In eLandings, the operator must enter processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

* * * * *

(vii) *AFA and CDQ trawl catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information. In the ELB, the operator must enter processor identification information, catch-by-haul information, and prohibited species discard or disposition data for all salmon species in each haul. In eLandings, the operator must enter processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data for all prohibited species except salmon.

* * * * *

(2) * * *

(iii) * * *

(B) * * *

(*1*) *Recording time limits.* Record the haul number or set number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable), and hail weight for each haul or set within 2 hours after completion of gear retrieval. If a catcher/processor using trawl gear and required to weigh all catch on a scale approved by NMFS, record the CDQ group number (if applicable) within 2 hours after completion of weighing all of the catch in the haul. The operator of a vessel must provide the information recorded in the ELB to the observer or an authorized officer upon request at any time after the specified deadlines.

* * * * *

(7) *ELB data submission.* The operator must transmit ELB data to NMFS at the specified e-mail address in the following manner:

(i) *Catcher/processors or motherships.* Directly to NMFS as an e-mail attachment or other NMFS-approved data transmission mechanism, by 2400 hours, A.l.t., each day to record the previous day's hauls.

* * * * *

■ 6. In § 679.7,

■ a. Remove and reserve paragraph (c)(1);

■ b. Remove paragraphs (d)(6) and (d)(9) through (d)(23);

■ c. Redesignate paragraph (d)(24) as (d)(6) and paragraph (d)(25) as (d)(9);

■ d. Revise paragraphs (d)(7), (d)(8);

■ e. Revise paragraph (k)(3)(vi); and

■ f. Add paragraph (k)(8).

The additions and revisions read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(1) [Reserved]

* * * * *

(d) * * *

(7) *Catch Accounting*—(i) *General*—(A) For the operator of a catcher/processor using trawl gear or a mothership, to harvest or take deliveries of CDQ or PSQ species without a valid scale inspection report signed by an authorized scale inspector under § 679.28(b)(2) on board the vessel.

(B) For the operator of a vessel required to have an observer sampling station described at § 679.28(d), to harvest or take deliveries of CDQ or PSQ species without a valid observer sampling station inspection report issued by NMFS under § 679.28(d)(8) on board the vessel.

(C) For the manager of a shoreside processor or stationary floating processor, or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(c), to fail to weigh catch on a scale that meets the requirements of § 679.28(c).

(D) For the operator of a catcher/processor or a catcher vessel required to carry a level 2 observer, to combine catch from two or more CDQ groups in the same haul or set.

(E) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, to discard any groundfish CDQ species or salmon PSQ before it is delivered to a processor, unless discard of the groundfish CDQ is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(F) For the operator of a vessel using trawl gear, to release CDQ catch from

the codend before it is brought on board the vessel and weighed on a scale approved by NMFS under § 679.28(b) or delivered to a processor. This includes, but is not limited to, "codend dumping" and "codend bleeding."

(G) For the operator of a catcher/processor using trawl gear or a mothership, to sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of § 679.28(b), including the daily test requirements described at § 679.28(b)(3).

(H) For a CDQ representative, to use methods other than those approved by NMFS to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(ii) *Fixed gear sablefish*—(A) For a CDQ group, to report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve, if that sablefish CDQ was caught with fishing gear other than fixed gear.

(B) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, to discard sablefish harvested with fixed gear unless retention of sablefish is not authorized under § 679.23(e)(4)(ii) or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(8) *Prohibited species catch*—(i) *Crab*—(A) *Zone 1.* For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained.

(B) *Zone 2.* For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained.

(C) *COBLZ.* For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in the *C. opilio* Bycatch Limitation Zone after the CDQ group's PSQ for *C. opilio* Tanner crab is attained.

(ii) *Salmon*—(A) *Discard of salmon.* For any person, to discard salmon from a catcher vessel, catcher/processor, mothership, shoreside processor, or SFP or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock CDQ in the Bering Sea, until the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed.

(B) *Non-Chinook salmon.* For the operator of an eligible vessel, to use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-Chinook salmon PSQ is attained, unless the vessel is participating in a non-Chinook salmon bycatch reduction ICA under § 679.21(g).

(C) *Chinook salmon*—(*1*) *Overages of Chinook salmon PSC allocations.* For a CDQ group, to exceed a Chinook salmon PSC allocation issued under § 679.21(f) as of June 25 for the A season allocation and as of December 1 for the B season allocation.

(*2*) For the operator of a catcher vessel or catcher/processor, to start a new fishing trip for pollock CDQ in the BS in the A season or in the B season, if the CDQ group for which the vessel is fishing has exceeded its Chinook salmon PSC allocation issued under § 679.21(f) for that season.

(*3*) For the operator of a catcher/processor or mothership, to catch or process pollock CDQ in the BS without complying with the applicable requirements of § 679.28(j).

(*4*) For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock CDQ in the BS before the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul.

(*5*) For the operator of a catcher vessel, to deliver pollock CDQ to a shoreside processor or stationary floating processor that does not have a catch monitoring and control plan approved under § 679.28(g).

(*6*) For the manager of a shoreside processor or stationary floating processor, to begin sorting a pollock CDQ offload before the observer has completed the count of salmon and the collection of scientific data or biological samples from the previous offload.

* * * * *

(k) * * *

(3) * * *

(vi) *Catch monitoring and control plan (CMCP)*—(A) Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(B) Allow sorting of fish at any location in the processing plant other than those identified in the CMCP under § 678.28(g)(7).

(C) Allow salmon of any species to pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the processing plant in the approved CMCP.

* * * * *

(8) *Salmon bycatch*—(i) *Discard of salmon.* For any person, to discard any salmon from a catcher vessel, catcher/processor, mothership, or inshore processor, or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS before the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed.

(ii) *Catcher/processors and motherships.* For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock in the BS before the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul.

(iii) *Shoreside processors and stationary floating processors.* For the manager of a shoreside processor or stationary floating processor to begin sorting a new BS pollock offload before the observer has completed the count of salmon and the collection of scientific data or biological samples from the previous offload.

(iv) *Overages of Chinook salmon PSC allocations*—(A) For an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector, to exceed a Chinook salmon PSC allocation issued under § 679.21(f) as of June 25 for the A season allocation and as of December 1 for the B season allocation.

(B) For a catcher vessel or catcher/processor, to start a fishing trip for pollock in the BS in the A season or in the B season if the vessel is fishing under a transferable Chinook salmon PSC allocation issued to an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector under § 679.21(f) and the inshore cooperative or entity has exceeded its Chinook salmon PSC allocation for that season.

* * * * *

■ 7. In § 679.21,

■ a. Remove and reserve paragraph (a);

■ b. Revise paragraphs (b)(2)(ii), (b)(3), (c), (e)(1)(vi), (e)(3)(i)(A)(*3*)(*i*), (e)(7)(viii), (e)(7)(ix), and (g); and

■ c. Add paragraphs (b)(6) and (f).

The revisions and additions read as follows:

§ 679.21 Prohibited species bycatch management.

(a) [Reserved]

(b) * * *

(2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS pollock fisheries under paragraph (c) of this section and § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(6) *Addresses.* Unless otherwise specified, submit information required under this section to NMFS as follows: by mail to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802; by courier to the Office of the Regional Administrator, 709 West 9th St., Juneau, AK 99801; or by fax to 907–586–7465. Forms are available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*).

(c) *Salmon taken in the BS pollock fisheries.* Regulations in this paragraph apply to vessels directed fishing for pollock in the BS, including pollock CDQ, and processors taking deliveries from these vessels.

(1) *Salmon discard.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS, until the number of salmon has been determined by the observer and the observer's collection of any scientific data or biological samples from the salmon has been completed.

(2) *Salmon retention and storage*—(i) Operators of catcher/processors or motherships must:

(A) Sort and transport all salmon bycatch from each haul to an approved storage location adjacent to the observer sampling station that allows an observer free and unobstructed access to the salmon (see § 679.28(d)(2)(i) and (d)(7)). The salmon storage location must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(B) If, at any point during sorting of the haul or delivery for salmon, the salmon are too numerous to be contained in the salmon storage location, all sorting must cease and the observer must be given the opportunity to count the salmon in the storage location and collect scientific data or biological samples. Once the observer has completed all counting and sampling duties for the counted salmon, the salmon must be removed by vessel personnel from the approved storage location, in the presence of the observer.

(C) Before sorting of the next haul may begin, the observer must be given the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul.

(D) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sample station.

(ii) Operators of vessels delivering to shoreside processors or stationary floating processors must:

(A) Store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations.

(B) Deliver all salmon to the processor receiving the vessel's BS pollock catch.

(iii) Shoreside processors or stationary floating processors must:

(A) Comply with the requirements in § 679.28(g)(7)(vii) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

(B) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant in the CMCP.

(C) Sort and transport all salmon of any species to the salmon storage container identified in the CMCP (see § 679.28(g)(7)(vi)(C) and (x)(F)). The salmon must remain in that salmon storage container and within the view of the observer at all times during the offload.

(D) If, at any point during the offload, salmon are too numerous to be contained in the salmon storage container, the offload and all sorting must cease and the observer must be given the opportunity to count the salmon and collect scientific data or biological samples. The counted salmon then must be removed from the area by plant personnel in the presence of the observer.

(E) At the completion of the offload, the observer must be given the opportunity to count the salmon and collect scientific data or biological samples.

(F) Before sorting of the next offload of catch from the BS pollock fishery may begin, the observer must be given the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous offload of catch from the BS pollock fishery.

(3) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (c)(1) of this section must designate and identify to the observer aboard the vessel, or at the shoreside processor or SFP, a crew person or employee responsible for ensuring all sorting, retention, and storage of salmon occurs according to the requirements of (c)(2) of this section.

(4) *Discard of salmon.* Except for salmon under the PSD Program at § 679.26, all salmon must be returned to the sea as soon as is practicable, following notification by an observer that the number of salmon has been determined and the collection of scientific data or biological samples has been completed.

* * * * *

(e) * * *

(1) * * *

(vi) *BS Chinook salmon.* See paragraph (f) of this section.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*3*) * * *

(*i*) *Chinook salmon.* For BS Chinook salmon, see paragraph (f) of this section. For AI Chinook salmon, 7.5 percent of the PSC limit set forth in paragraph (e)(1)(viii) of this section.

* * * * *

(7) * * *

(viii) *AI Chinook salmon.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon by vessels using trawl gear while directed fishing for pollock in the AI will reach the annual limit of 700 Chinook salmon, as identified in paragraph (e)(1)(viii) of this section, NMFS, by notification in the **Federal Register** will close the AI Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear on the following dates:

(A) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(B) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

(ix) *Exemptions.* Trawl vessels participating in directed fishing for

pollock and operating under a non-Chinook salmon bycatch reduction ICA approved by NMFS under paragraph (g) of this section are exempt from closures in the Chum Salmon Savings Area described at paragraph (e)(7)(vii) of this section. See also § 679.22(a)(10) and Figure 9 to part 679.

* * * * *

(f) *BS Chinook Salmon Bycatch Management*—(1) *Applicability.* This paragraph contains regulations governing the bycatch of Chinook salmon in the BS pollock fishery.

(2) *BS Chinook salmon prohibited species catch (PSC) limit.* Each year, NMFS will allocate to AFA sectors, listed in paragraph (f)(3)(ii) of this section, a portion of either the 47,591 Chinook salmon PSC limit or the 60,000 Chinook salmon PSC limit.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit if:

(A) No Chinook salmon bycatch incentive plan agreement (IPA) is approved by NMFS under paragraph (f)(12) of this section; or

(B) That AFA sector has exceeded its performance standard under paragraph (f)(6) of this section.

(ii) An AFA sector will receive a portion of the 60,000 Chinook salmon PSC limit if:

(A) At least one IPA is approved by NMFS under paragraph (f)(12) of this section; and

(B) That AFA sector has not exceeded its performance standard under paragraph (f)(6) of this section.

(3) *Allocations of the BS Chinook salmon PSC limits*—(i) *Seasonal apportionment.* NMFS will apportion the BS Chinook salmon PSC limits annually 70 percent to the A season and 30 percent to the B season, which are described in § 679.23(e)(2)(i) and (ii).

(ii) *AFA sectors.* Each year, NMFS will make allocations of the applicable BS Chinook salmon PSC limit to the following four AFA sectors:

AFA sector:	Eligible participants are:
(A) Catcher/processor (C/P)	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and § 679.4(l)(3)(i)(A), respectively.
(B) Mothership	AFA catcher vessels harvesting pollock for processing by AFA motherships, all of which are permitted under § 679.4(l)(3)(i)(B) and § 679.4(l)(4), respectively.
(C) Inshore	AFA catcher vessels harvesting pollock for processing by AFA inshore processors, all of which are permitted under § 679.4(l)(3)(i)(C).
(D) CDQ Program	The six CDQ groups authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program.

(iii) *Allocations to each AFA sector.* NMFS will allocate the BS Chinook salmon PSC limits to each AFA sector as follows:

(A) If a sector is managed under the 60,000 Chinook salmon PSC limit, the maximum amount of Chinook salmon PSC allocated to each sector in each season and annually is:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) C/P	32.9	13,818	17.9	3,222	28.4	17,040
(2) Mothership	8.0	3,360	7.3	1,314	7.8	4,674
(3) Inshore	49.8	20,916	69.3	12,474	55.6	33,390
(4) CDQ Program	9.3	3,906	5.5	990	8.2	4,896

(B) If the sector is managed under the 47,591 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	#of Chinook	% Allocation	# of Chinook
(1) C/P	32.9	10,960	17.9	2,556	28.4	13,516
(2) Mothership	8.0	2,665	7.3	1,042	7.8	3,707
(3) Inshore	49.8	16,591	69.3	9,894	55.6	26,485
(4) CDQ Program	9.3	3,098	5.5	785	8.2	3,883

(iv) *Allocations to the AFA catcher/processor and mothership sectors*—(A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii)(A) or (B) of this section to entities representing the AFA catcher/processor sector and the AFA mothership sector if these sectors meet the requirements of paragraph (f)(8) of this section.

(B) If no entity is approved by NMFS to represent the AFA catcher/processor sector or the AFA mothership sector, then NMFS will manage that sector under a non-transferable Chinook salmon PSC allocation under paragraph (f)(10) of this section.

(v) *Allocations to inshore cooperatives and the AFA inshore open access fishery.* NMFS will further allocate the inshore sector's Chinook salmon PSC allocation under paragraph (f)(3)(iii)(A)(*3*) or (B)(*3*) of this section among the inshore cooperatives and the inshore open access fishery based on the percentage allocations of pollock to each inshore cooperative under § 679.62(a). NMFS will issue transferable Chinook salmon PSC allocations to inshore cooperatives. Any Chinook salmon PSC allocated to the inshore open access fishery will be as a non-transferable

allocation managed by NMFS under the requirements of paragraph (f)(10) of this section.

(vi) *Allocations to the CDQ Program.* NMFS will further allocate the Chinook salmon PSC allocation to the CDQ Program under paragraph (f)(3)(iii)(A)(*4*) or (B)(*4*) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation in Column B of Table 47d to this part. NMFS will issue transferable Chinook salmon PSC allocations to CDQ groups.

(vii) *Accrual of Chinook salmon bycatch to specific PSC allocations.*

If a Chinook salmon PSC allocation is:	Then all Chinook salmon bycatch:
(A) A transferable allocation to a sector-level entity, inshore cooperative, or CDQ group under paragraph (f)(8) of this section.	By any vessel fishing under a transferable allocation will accrue against the allocation to the entity representing that vessel.
(B) A non-transferable allocation to a sector or the inshore open access fishery under paragraph (f)(10) of this section.	By any vessel fishing under a non-transferable allocation will accrue against the allocation established for the sector or inshore open access fishery, whichever is applicable.
(C) The opt-out allocation under paragraph (f)(5) of this section	By any vessel fishing under the opt-out allocation will accrue against the opt-out allocation.

(viii) *Public release of Chinook salmon PSC information.* For each year, NMFS will release to the public and publish on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*):

(A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation;

(B) The non-transferable Chinook salmon PSC allocations;

(C) The vessels fishing under each transferable or non-transferable allocation;

(D) The amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation; and

(E) Any changes to these allocations due to transfers under paragraph (f)(9) of this section, rollovers under paragraph (f)(11) of this section, and deductions from the B season non-transferable allocations under paragraphs (f)(5)(v) or (f)(10)(iii) of this section.

(4) *Reduction in allocations of the 60,000 Chinook salmon PSC limit*—(i) *Reduction in sector allocations.* NMFS will reduce the seasonal allocation of the 60,000 Chinook salmon PSC limit to the catcher/processor sector, the mothership sector, the inshore sector, or the CDQ Program under paragraph (f)(3)(iii)(A) of this section, if the owner of any permitted AFA vessel in that sector, or any CDQ group, does not participate in an approved IPA under paragraph (f)(12) of this section. The amount of Chinook salmon subtracted from each sector's allocation for those not participating in an approved IPA is calculated as follows:

For each sector:	Reduce the A season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:		Reduce the B season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:		
(A) Catcher/processor	From Column E in Table 47a to this part.	+	From Column F in Table 47a to this part.	=	The annual amount of Chinook salmon subtracted from each sector's Chinook salmon PSC allocation listed at paragraph (f)(3)(iii)(A) of this section.
(B) Mothership	From Column E in Table 47b to this part.	.....	From Column F in Table 47b to this part.		
(C) Inshore	From Column E in Table 47c to this part.	.....	From Column F in Table 47c to this part.		
(D) CDQ Program	From Column C in Table 47d to this part.	.....	From Column D in Table 43d to this part.		

(ii) *Adjustments to the inshore sector and inshore cooperative allocations*—(A) If some members of an inshore cooperative do not participate in an approved IPA, NMFS will only reduce the allocation to the cooperative to which those vessels belong, or the inshore open access fishery.

(B) If all members of an inshore cooperative do not participate in an approved IPA, the amount of Chinook salmon that remains in the inshore sector's allocation, after subtracting the amount in paragraph (f)(4)(i)(C) of this section for the non-participating inshore cooperative, will be reallocated among the inshore cooperatives participating in an approved IPA based on the proportion each participating cooperative represents of the Chinook salmon PSC initially allocated among the participating inshore cooperatives that year.

(iii) *Adjustment to CDQ group allocations.* If a CDQ group does not participate in an approved IPA, the amount of Chinook salmon that remains in the CDQ Program's allocation, after subtracting the amount in paragraph (f)(4)(i)(D) of this section for the non-participating CDQ group, will be reallocated among the CDQ groups participating in an approved IPA based on the proportion each participating CDQ group represents of the Chinook salmon PSC initially allocated among the participating CDQ groups that year.

(iv) *All members of a sector do not participate in an approved IPA.* If all members of a sector do not participate in an approved IPA, the amount of Chinook salmon that remains after subtracting the amount in paragraph (f)(4)(i) of this section for the non-participating sector will not be reallocated among the sectors that do have members participating in an approved IPA. This portion of the 60,000 PSC limit will remain unallocated for that year.

(5) *Chinook salmon PSC opt-out allocation.* The following table describes requirements for the opt-out allocation:

(i) What is the amount of Chinook salmon PSC that will be allocated to the opt-out allocation in the A season and the B season?	The opt-out allocation will equal the sum of the Chinook salmon PSC deducted under paragraph (f)(4)(i) of this section from the seasonal allocations of each sector with members not participating in an approved IPA.
(ii) Which participants will be managed under the opt-out allocation?	Any AFA permitted vessel or any CDQ group that is a member of a sector eligible under paragraph (f)(2)(ii) of this section to receive allocations of the 60,000 PSC limit, but that is not participating in an approved IPA.
(iii) What Chinook salmon bycatch will accrue against the opt-out allocation?	All Chinook salmon bycatch by participants under paragraph (f)(2)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(2)(ii) of this section will be managed as a group under the seasonal opt-out allocations. If the Regional Administrator determines that the seasonal opt-out allocation will be reached, NMFS will publish a notice in the FEDERAL REGISTER closing directed fishing for pollock in the BS, for the remainder of the season, for all vessels fishing under the opt-out allocation.
(v) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation exceeds the amount allocated to the A season opt-out allocation?	NMFS will deduct from the B season opt-out allocation any Chinook salmon bycatch in the A season that exceeds the A season opt-out allocation.
(vi) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation is less than the amount allocated to the A season opt-out allocation?	If Chinook salmon bycatch by vessels fishing under the opt-out allocation in the A season is less than the amount allocated to the opt-out allocation in the A season, this amount of Chinook salmon will not be added to the B season opt-out allocation.
(vii) Is Chinook salmon PSC allocated to the opt-out allocation transferable?	No. Chinook salmon PSC allocated to the opt-out allocation is not transferable.

(6) *Chinook salmon bycatch performance standard.* If the total annual Chinook salmon bycatch by the members of a sector participating in an approved IPA is greater than that sector's annual threshold amount of Chinook salmon in any three of seven consecutive years, that sector will receive an allocation of Chinook salmon under the 47,591 PSC limit in all future years.

(i) *Annual threshold amount.* Prior to each year, NMFS will calculate each sector's annual threshold amount. NMFS will post the annual threshold amount for each sector on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). At the end of each year, NMFS will evaluate the Chinook salmon bycatch by all IPA participants in each sector against that sector's annual threshold amount.

(ii) *Calculation of the annual threshold amount.* A sector's annual threshold amount is the annual number of Chinook salmon that would be allocated to that sector under the 47,591 Chinook salmon PSC limit, as shown in the table in paragraph (f)(3)(iii)(B) of this section. If any vessels in a sector do not participate in an approved IPA, NMFS will reduce that sector's annual threshold amount by the number of Chinook salmon associated with each vessel not participating in an approved IPA. If any CDQ groups do not participate in an approved IPA, NMFS will reduce the CDQ Program's annual threshold amount by the number of Chinook salmon associated with each CDQ group not participating in an approved IPA. NMFS will subtract the following numbers of Chinook salmon from each sector's annual threshold amount for vessels or CDQ groups not participating in an approved IPA:

For each sector:	The amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:
(A) Catcher/processor	From Column G of Table 47a to this part;
(B) Mothership	From Column G of Table 47b to this part;
(C) Inshore	From Column G of Table 47c to this part;
(D) CDQ Program	From Column E of Table 47d to this part.

(iii) If NMFS determines that a sector has exceeded its performance standard by exceeding its annual threshold amount in any three of seven consecutive years, NMFS will issue a notification in the **Federal Register** that the sector has exceeded its performance standard and that NMFS will allocate to that sector the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(B) of this section in all subsequent years. All members of the affected sector will fish under this lower allocation regardless of whether a vessel or CDQ group within that sector participates in an approved IPA.

(7) *Replacement vessels.* If an AFA permitted vessel listed in Tables 47a through 47c to this part is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, the portion and number of Chinook salmon associated with that vessel in Tables 47a through 47c to this part will be assigned to the replacement vessel or distributed among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action until Tables 47a through 47c to this part can be revised as necessary.

(8) *Entities eligible to receive transferable Chinook salmon PSC allocations*—(i) NMFS will issue transferable Chinook salmon PSC allocations to the following entities, if these entities meet all of the applicable requirements of this part.

(A) *Inshore cooperatives.* NMFS will issue transferable Chinook salmon PSC allocations to the inshore cooperatives permitted annually under § 679.4(l)(6). The representative and agent for service of process (see definition at § 679.2) for an inshore cooperative is the

cooperative representative identified in the application for an inshore cooperative fishing permit issued under § 679.4(l)(6), unless the inshore cooperative representative notifies NMFS in writing that a different person will act as its agent for service of process for purposes of this paragraph (f). An inshore cooperative is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(B) *CDQ groups.* NMFS will issue transferable Chinook salmon PSC allocations to the CDQ groups. The representative and agent for service of process for a CDQ group is the chief executive officer of the CDQ group, unless the chief executive officer notifies NMFS in writing that a different person will act as its agent for service of process. A CDQ group is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(C) *Entity representing the AFA catcher/processor sector.* NMFS will authorize only one entity to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processors eligible to fish under transferable Chinook salmon PSC allocations.

(*1*) NMFS will issue transferable Chinook salmon allocations under the 60,000 Chinook salmon PSC limit to the entity representing the catcher/processor sector if that entity represents all of the owners of AFA permitted vessels in this sector that are participants in an approved IPA.

(*2*) NMFS will issue transferable Chinook salmon allocations under the 47,591 Chinook salmon PSC limit to an entity representing the catcher/processor sector if that entity represents all of the owners of AFA permitted vessels in this sector.

(D) *Entity representing the AFA mothership sector.* NMFS will authorize only one entity to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the vessels eligible to fish under transferable Chinook salmon PSC allocations.

(*1*) NMFS will issue transferable Chinook salmon allocations under the 60,000 Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all of the owners of AFA permitted vessels in this sector that are participants in an approved IPA.

(*2*) NMFS will issue transferable Chinook salmon allocations under the 47,591 Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all of the owners of AFA permitted vessels in this sector.

(ii) *Request for approval as an entity eligible to receive transferable Chinook salmon PSC allocations.* A representative of an entity representing the catcher/processor sector or the mothership sector may request approval by NMFS to receive transferable Chinook salmon PSC allocations on behalf of the members of the sector. The application must be submitted to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and a contract, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in, including the affidavit affirming that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. The application form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Contract.* A contract containing the following information must be attached to the completed application form:

(*1*) Information that documents that all vessel owners party to the contract agree that the entity, the entity's representative, and the entity's agent for service of process named in the application form represent them for purposes of receiving transferable Chinook salmon PSC allocations.

(*2*) A statement that the entity's representative and agent for service of process are authorized to act on behalf of the vessel owners party to the contract.

(*3*) *Certification of applicant.* Signatures, printed names, and date of signature for the owners of each AFA permitted vessel identified in the application.

(C) *Contract duration.* Once submitted, the contract attached to the application is valid until amended or terminated by the parties to the contract.

(D) *Deadline.* An application and contract must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the Chinook salmon PSC allocations are effective.

(E) *Approval.* If more than one entity application is submitted to NMFS, NMFS will approve the application for the entity that represents the most eligible vessel owners in the sector.

(F) *Amendments to the sector entity.*

(*1*) An amendment to sector entity contract, with no change in entity participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the entity representative. To amend a contract, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section.

(*2*) To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section, by December 1.

(iii) *Entity Representative.* (A) The entity's representative must—

(*1*) Act as the primary contact person for NMFS on issues relating to the operation of the entity;

(*2*) Submit on behalf of the entity any applications required for the entity to receive a transferable Chinook salmon PSC allocation and to transfer some or all of that allocation to and from other entities eligible to receive transfers of Chinook salmon PSC allocations;

(*3*) Ensure that an agent for service of process is designated by the entity; and

(*4*) Ensure that NMFS is notified if a substitute agent for service of process is designated. Notification must include the name, address, and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the entity or its members within the 5-year period from the time the agent is identified in the application to NMFS under paragraph (f)(8)(ii) of this section.

(B) All vessel owners that are members of an inshore cooperative, or members of the entity that represents the catcher/processor sector or the mothership sector, may authorize the entity representative to sign a proposed IPA submitted to NMFS, under paragraph (f)(12) of this section, on behalf of the vessel owners that intend to participate in that IPA. This authorization must be included in the contract submitted to NMFS, under paragraph (f)(8)(ii)(B) of this section, for the sector-level entities and in the contract submitted annually to NMFS by inshore cooperatives under § 679.61(d).

(iv) *Agent for service of process.* The entity's agent for service of process must—

(A) Be authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of an entity receiving a transferable allocation of Chinook salmon PSC or with respect to a CDQ group. Service on or notice to the entity's appointed agent constitutes service on or notice to all members of the entity.

(B) Be capable of accepting service on behalf of the entity until December 31 of the year five years after the calendar year for which the entity notified the Regional Administrator of the identity of the agent.

(v) *Absent a catcher/processor sector or mothership sector entity.* If the catcher/processor sector or the mothership sector does not form an entity to receive a transferable allocation of Chinook salmon PSC, the sector will be managed by NMFS under a non-transferable allocation of Chinook salmon PSC under paragraph (f)(10) of this section.

(9) *Transfers of Chinook salmon PSC*—(i) A Chinook salmon PSC allocation issued to eligible entities under paragraph (f)(8)(i) of this section may be transferred to any other entity receiving a transferable allocation of Chinook salmon PSC by submitting to NMFS an application for transfer described in paragraph (f)(9)(iii) of this section. Transfers of Chinook salmon PSC allocations among eligible entities are subject to the following restrictions:

(A) Entities receiving transferable allocations under the 60,000 PSC limit may only transfer to and from other entities receiving allocations under the 60,000 PSC limit.

(B) Entities receiving transferable allocations under the 47,591 PSC limit may only transfer to and from other entities receiving allocations under the 47,591 PSC limit.

(C) Chinook salmon PSC allocations may not be transferred between seasons.

(ii) *Post-delivery transfers.* If the Chinook salmon bycatch by an entity exceeds its seasonal allocation, the entity may receive transfers of Chinook salmon PSC to cover overages for that season. An entity may conduct transfers to cover an overage that results from Chinook salmon bycatch from any fishing trip by a vessel fishing on behalf of that entity that was completed or is in progress at the time the entity's allocation is first exceeded. Under § 679.7(d)(8)(ii)(C)(*2*) and (k)(8)(iv)(B), vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new fishing trip for pollock in the BS on behalf of that same entity for the remainder of that season.

(iii) *Application for transfer of Chinook salmon PSC allocations*—(A) *Completed application.* NMFS will process a request for transfer of Chinook salmon PSC provided that a paper or electronic application is completed, with all information fields accurately filled in. Application forms are available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Certification of transferor*—(*1*) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(*2*) *Electronic submittal.* The transferor's designated entity representative must log onto the NMFS online services system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(C) *Certification of transferee*—(*1*) *Non-electronic submittal.* The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(*2*) *Electronic submittal.* The transferee's designated representative must log onto the NMFS online services system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(D) *Deadline.* NMFS will not approve an application for transfer of Chinook salmon PSC after June 25 for the A season and after December 1 for the B season.

(10) *Non-transferable Chinook salmon PSC allocations*—(i) All vessels belonging to a sector that is ineligible to receive transferable allocations under paragraph (f)(8) of this section, any catcher vessels participating in an inshore open access fishery, and all vessels fishing under the opt-out allocation under paragraph (f)(5) of this section will fish under specific non-transferable Chinook salmon PSC allocations.

(ii) All vessels fishing under a non-transferable Chinook salmon PSC allocation, including vessels fishing on behalf of a CDQ group, will be managed together by NMFS under that non-transferable allocation. If, during the fishing year, the Regional Administrator determines that a seasonal non-transferable Chinook salmon PSC allocation will be reached, NMFS will publish a notice in the **Federal Register** closing the BS to directed fishing for pollock by those vessels fishing under that non-transferable allocation for the remainder of the season or for the remainder of the year.

(iii) For each non-transferable Chinook salmon PSC allocation, NMFS will deduct from the B season allocation any amount of Chinook salmon bycatch in the A season that exceeds the amount available under the A season allocation.

(11) *Rollover of unused A season allocation*—(i) *Rollovers of transferable allocations.* NMFS will add any Chinook salmon PSC allocation remaining at the end of the A season, after any transfers under paragraph (f)(9)(ii) of this section, to an entity's B season allocation.

(ii) *Rollover of non-transferable allocations.* For a non-transferable allocation for the mothership sector, catcher/processor sector, or an inshore open access fishery, NMFS will add any Chinook salmon PSC remaining in that non-transferable allocation at the end of the A season to that B season non-transferable allocation.

(12) *Chinook salmon bycatch incentive plan agreements (IPAs)*—(i) *Minimum participation requirements.* More than one IPA may be approved by NMFS. Each IPA must have participants that represent the following:

(A) *Minimum percent pollock.* Parties to an IPA must collectively represent at least 9 percent of the BS pollock quota. The percentage of pollock attributed to each sector, AFA permitted vessel, and CDQ group is as follows:

For each sector	The percent of BS pollock quota attributed to each sector	Percent of BS pollock quota used to calculate IPA minimum participation for each AFA permitted vessel and CDQ group is the value in
(*1*) Catcher/processor	36	Column H in Table 47a to this part.
(*2*) Mothership	9	Column H in Table 47b to this part.
(*3*) Inshore	45	Column H in Table 47c to this part.
(*4*) CDQ Program	10	Column F in Table 47d to this part.

(B) *Minimum number of unaffiliated AFA entities.* Parties to an IPA must represent any combination of two or more CDQ groups or corporations, partnerships, or individuals who own AFA permitted vessels and are not affiliated, as affiliation is defined for purposes of AFA entities in § 679.2.

(ii) *Membership in an IPA.*—(A) No vessel owner or CDQ group is required to join an IPA.

(B) For a vessel owner in the catcher/processor sector or mothership sector to join an IPA, that vessel owner must be a member of the entity representing that sector under paragraph (f)(8).

(C) For a CDQ group to be a member of an IPA, the CDQ group must sign the IPA and list in that IPA each vessel harvesting BS pollock CDQ, on behalf of that CDQ group, that will participate in that IPA.

(iii) *Request for approval of a proposed IPA.* The IPA representative must submit an application for approval of a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and the proposed IPA, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in, including the affidavit affirming that each eligible vessel owner or CDQ group, from whom the applicant received written notification requesting to join the IPA, has been allowed to join the IPA subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the IPA. The application form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Proposed IPA.* The proposed IPA must contain the following information:

(*1*) *Name of the IPA.* The same IPA name submitted on the application form.

(*2*) *Representative.* The name, telephone number, and e-mail address of the IPA representative who submits the proposed IPA on behalf of the parties and who is responsible for submitting proposed amendments to the IPA and the annual report required under paragraph (f)(12)(vii) of this section.

(*3*) *Description of the incentive plan.* The IPA must contain a written description of the following:

(*i*) The incentive(s) that will be implemented under the IPA for the operator of each vessel participating in the IPA to avoid Chinook salmon bycatch under any condition of pollock and Chinook salmon abundance in all years;

(*ii*) The rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both;

(*iii*) How the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon bycatch rates relative to what would have occurred in absence of the incentive program;

(*iv*) How the incentive measures in the IPA promote Chinook salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon; and

(*v*) How the IPA ensures that the operator of each vessel governed by the IPA will manage his or her Chinook salmon bycatch to keep total bycatch below the performance standard described in paragraph (f)(6) of this section for the sector in which the vessel participates.

(*4*) *Compliance agreement.* The IPA must include a written statement that all parties to the IPA agree to comply with all provisions of the IPA.

(*5*) *Signatures.* The names and signatures of the owner or representative for each vessel and CDQ group that is a party to the IPA. The representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector under paragraph (f)(8) of this section may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.

(iv) *Deadline and duration*—(A) *Deadline for proposed IPA.* An application must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the IPA is proposed to be effective.

(B) *Duration.* Once approved, an IPA is effective starting January 1 of the year following the year in which NMFS approves the IPA, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved. Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year. No party may join or leave an IPA once it is approved, except as allowed under paragraph (f)(12)(v)(C) of this section.

(v) *NMFS review of a proposed IPA*—(A) *Approval.* An IPA will be approved by NMFS if it meets the following requirements:

(*1*) Meets the minimum participation requirements in paragraph (f)(12)(i) of this section;

(*2*) Is submitted in compliance with the requirements of paragraph (f)(12)(ii) and (iv) of this section; and

(*3*) Contains the information required in paragraph (f)(12)(iii) of this section.

(B) *IPA identification number.* If approved, NMFS will assign an IPA number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA.

(C) *Amendments to an IPA.* Amendments to an approved IPA may be submitted to NMFS and will be reviewed under the requirements of this paragraph (f)(12).

(*1*) An amendment to an approved IPA, with no change in the IPA participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the IPA representative. To amend an IPA, the IPA representative must submit a complete application, as described in paragraph (f)(12)(iii) of this section.

(*2*) An amendment to the list of IPA participants must be received by NMFS no later than 1700 hours, A.l.t., on

December 1 and will be effective at the beginning of the next year. To amend the list of participants, the IPA representative must submit an application form, as described in paragraph (f)(12)(iii)(A) of this section.

(*3*) An amendment to the list of participants related to a replacement vessel, under paragraph (f)(7) of this section, may be submitted to NMFS at any time. To amend the list of participants for a replacement vessel, the IPA representative must submit the application form, as described in paragraph (f)(12)(iii)(A) of this section, and include a copy of the AFA permit issued under § 679.4 for the replacement vessel.

(D) *Disapproval*—(*1*) NMFS will disapprove a proposed IPA or a proposed amendment to an IPA for either of the following reasons:

(*i*) If the proposed IPA fails to meet any of the requirements of paragraphs (f)(12)(i) through (iii) of this section, or

(*ii*) If a proposed amendment to an IPA would cause the IPA to no longer be consistent with the requirements of paragraphs (f)(12)(i) through (iv) of this section.

(*2*) *Initial Administrative Determination (IAD).* If, in NMFS' review of the proposed IPA, NMFS identifies deficiencies in the proposed IPA that require disapproval of the proposed IPA, NMFS will notify the applicant in writing. The applicant will be provided 30 days to address, in writing, the deficiencies identified by NMFS. An applicant will be limited to one 30-day period to address any deficiencies identified by NMFS. Additional information or a revised IPA received after the 30-day period specified by NMFS has expired will not be considered for purposes of the review of the proposed IPA. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed IPA, the Regional Administrator will approve the proposed IPA under paragraphs (f)(12)(iv)(B) and (f)(12)(v)(A) of this section. However, if, after consideration of the original proposed IPA and any additional information submitted during the 30-day period, NMFS determines that the proposed IPA does not comply with the requirements of paragraph (f)(12) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed IPA.

(*3*) *Administrative Appeals.* An applicant who receives an IAD disapproving a proposed IPA may appeal under the procedures set forth at § 679.43. If the applicant fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed IPA, then the IPA will be effective as described in paragraph (f)(12)(iv)(B) of this section.

(*4*) While appeal of an IAD disapproving a proposed IPA is pending, proposed members of the IPA subject to the IAD that are not currently members of an approved IPA will fish under the opt-out allocation under paragraph (f)(5) of this section. If no other IPA has been approved by NMFS, NMFS will issue all sectors allocations of the 47,591 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(B) of this section.

(vi) *Public release of an IPA.* NMFS will make all proposed IPAs and all approved IPAs and the list of participants in each approved IPA available to the public on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*).

(vii) *IPA Annual Report.* The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(A) *Submission deadline.* The annual report must be postmarked or received by the Council no later than April 1 of each year following the year in which the IPA is first effective.

(B) *Information requirements.* The annual report must contain the following information:

(*1*) A comprehensive description of the incentive measures in effect in the previous year;

(*2*) A description of how these incentive measures affected individual vessels;

(*3*) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures; and

(*4*) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made.

(g) *BS Non-Chinook Salmon Bycatch Management*—(1) *Requirements for the non-Chinook salmon bycatch reduction intercooperative agreement (ICA)*—(i) *Application.* The ICA representative identified in paragraph (g)(2)(i)(B) of this section must submit a signed copy of the proposed non-Chinook salmon bycatch reduction ICA, or any proposed amendments to the ICA, to NMFS at the address in paragraph (b)(6) of this section.

(ii) *Deadline.* For any ICA participant to be exempt from closure of the Chum Salmon Savings Area as described at paragraph (e)(7)(ix) of this section and at § 679.22(a)(10), the ICA must be filed in compliance with the requirements of this section, and approved by NMFS. The proposed non-Chinook salmon bycatch reduction ICA or any amendments to an approved ICA must be postmarked or received by NMFS by December 1 of the year before the year in which the ICA is proposed to be effective. Exemptions from closure of the Chum Salmon Savings Area will expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by a NMFS-approved amended ICA.

(2) *Information requirements.* The ICA must include the following provisions:

(i) *Participants*—(A) The names of the AFA cooperatives and CDQ groups participating in the ICA. Collectively, these groups are known as parties to the ICA. Parties to the ICA must agree to comply with all provisions of the ICA.

(B) The name, business mailing address, business telephone number, business fax number, and business e-mail address of the ICA representative.

(C) The ICA also must identify one entity retained to facilitate vessel bycatch avoidance behavior and information sharing.

(D) The ICA must identify at least one third party group. Third party groups include any organizations representing western Alaskans who depend on non-Chinook salmon and have an interest in non-Chinook salmon bycatch reduction but do not directly fish in a groundfish fishery.

(ii) The names, Federal fisheries permit numbers, and USCG documentation numbers of vessels subject to the ICA.

(iii) Provisions that dictate non-Chinook salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including:

(A) *Initial base rate.* The initial B season non-Chinook salmon base rate shall be 0.19 non-Chinook salmon per metric ton of pollock.

(B) *Inseason adjustments to the non-Chinook base rate calculation.* Beginning July 1 of each fishing year and on each Thursday during the B season, the B season non-Chinook base rate shall be recalculated. The recalculated non-Chinook base rate shall be the three week rolling average of the B season non-Chinook bycatch rate for the current year. The recalculated base rate shall be used to determine bycatch avoidance areas.

(C) *ICA Chum Salmon Savings Area notices.* On each Thursday and Monday after June 10 of each year for the duration of the pollock B season, the entity identified under paragraph (g)(2)(i)(C) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated "ICA Chum Savings Areas" by a series of latitude and longitude coordinates. The Thursday notice must be effective from 6 p.m. A.l.t. the following Friday through 6 p.m. A.l.t. the following Tuesday. The Monday notice must be effective from 6 p.m. A.l.t. the following Tuesday through 6 p.m. A.l.t. the following Friday. For any ICA Salmon Savings Area notice, the maximum total area closed must be at least 3,000 square miles for ICA Chum Savings Area closures.

(D) *Fishing restrictions for vessels assigned to tiers.* For vessels in a cooperative assigned to Tier 3, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed to directed fishing for pollock, including pollock CDQ, for seven days. For vessels in a cooperative assigned to Tier 2, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed through 6 p.m. Alaska local time on the following Tuesday. Vessels in a cooperative assigned to Tier 1 may operate in any area designated as an ICA Chum Salmon Savings Area.

(E) *Cooperative tier assignments.* Initial and subsequent base rate calculations must be based on each cooperative's pollock catch for the prior two weeks and the associated bycatch of non-Chinook salmon taken by its members. Base rate calculations shall include non-Chinook salmon bycatch and pollock caught in both the CDQ and non-CDQ pollock directed fisheries. Cooperatives with non-Chinook salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Cooperatives with non-Chinook salmon bycatch rates of equal to or greater than 75 percent, but less than or equal to 125 percent of the base rate shall be assigned to Tier 2. Cooperatives with non-Chinook salmon bycatch rates of greater than 125 percent of the base rate shall be assigned to Tier 3.

(iv) Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA. The ICA must include provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against another party for breach of the ICA. The ICA must include minimum annual uniform assessments for any violation of savings area closures of $10,000 for the first offense, $15,000 for the second offense, and $20,000 for each offense thereafter.

(v) Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor. The compliance audit must be conducted by a non-party entity, and each party must have an opportunity to participate in selecting the non-party entity. If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA of the failure to comply and must simultaneously distribute to all parties of the ICA the information used to determine the failure to comply occurred and must include such notice(s) in the compliance report.

(vi) Provisions requiring data dissemination in certain circumstances. If the entity retained to facilitate vessel bycatch avoidance behavior and information sharing under paragraph (g)(2)(i)(C) of this section determines that an apparent violation of an ICA Chum Salmon Savings Area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 180 days of receiving the notice, the information used by the entity to determine if an apparent violation was committed must be disseminated to all parties to the ICA.

(3) *NMFS review of the proposed ICA and amendments.* NMFS will approve the initial or an amended ICA if it meets all the requirements specified in paragraph (g) of this section. If NMFS disapproves a proposed ICA, the ICA representative may resubmit a revised ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(4) *ICA Annual Report.* The ICA representative must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The ICA annual report must be postmarked or received by the Council by April 1 of each year following the year in which the ICA is first effective.

(ii) *Information requirements.* The ICA annual report must contain the following information:

(A) An estimate of the number of non-Chinook salmon avoided as demonstrated by the movement of fishing effort away from Chum Salmon Savings Areas, and

(B) The results of the compliance audit required at § 679.21(g)(2)(v).

■ 8. In § 679.22, revise paragraphs (a)(10) and (h) to read as follows:

§ 679.22 Closures.

(a) * * *

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(e)(7)(vii)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under a non-Chinook salmon bycatch reduction ICA approved under § 679.21(g) are exempt from closures in the Chum Salmon Savings Area.

* * * * *

(h) *CDQ fisheries closures.* See § 679.7(d)(8) for time and area closures that apply to the CDQ fisheries once the non-Chinook salmon PSQ and the crab PSQs have been reached.

* * * * *

■ 9. In § 679.26, revise paragraph (c)(1) to read as follows:

§ 679.26 Prohibited Species Donation Program.

* * * * *

(c) * * *

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the BS pollock fishery and PSD program must comply with applicable regulations at §§ 679.7(d) and (k), 679.21(c), and 679.28, including allowing the collection of data and biological sampling by an observer prior to processing any fish under the PSD program.

* * * * *

■ 10. In § 679.28,

■ a. Redesignate paragraphs (d)(7) and (d)(8) as paragraphs (d)(8) and (d)(9), respectively;

■ b. Add paragraphs (d)(7), (g)(7)(vi)(C), and (g)(7)(x)(F);

■ c. Revise newly redesignated paragraph (d)(9)(i)(H) and paragraphs (g)(2)(i), (g)(7)(vii)(A) and (C), (g)(7)(ix)(A), and (g)(7)(x)(D) and (E);

■ d. Add paragraph (j); and

■ e. Redesignate paragraphs (i)(1)(iii), (iv), and(v) as paragraphs (i)(1)(ii), (iii), and (iv), respectively.

The revisions and additions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(7) *Catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* Catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from vessels directed fishing for pollock in the BS also must meet the following requirements:

(i) A container to store salmon must be located adjacent to the observer sampling station;

(ii) All salmon stored in the container must remain in view of the observer at the observer sampling station at all times during the sorting of each haul; and

(iii) The container to store salmon must be at least 1.5 cubic meters.

* * * * *

(9) * * *

(i) * * *

(H) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station including the observer sampling scale. For catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ, the diagram also must include the location of the last point of sorting in the factory and the location of the salmon storage container required under paragraph (d)(7) of this section.

* * * * *

(g) * * *

(2) * * *

(i) AFA and CDQ pollock,

* * * * *

(7) * * *

(vi) * * *

(C) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observation area must provide a clear, unobstructed view of the salmon storage container to ensure no salmon of any species are removed without the observer's knowledge.

(vii) * * *

(A) *Location of observer work station.* (1) The observer work station must be located in an area protected from the weather where the observer has access to unsorted catch.

(2) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observer work station must be adjacent to the location where salmon will be counted and biological samples or scientific data are collected.

* * * * *

(C) *Proximity of observer work station.* The observation area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

* * * * *

(ix) * * *

(A) Orienting new observers to the plant and providing a copy of the approved CMCP;

* * * * *

(x) * * *

(D) The location of each scale used to weigh catch;

(E) Each location where catch is sorted including the last location where sorting could occur; and

(F) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for BS pollock, including vessels directed fishing for pollock CDQ in the BS, the location of the salmon storage container.

* * * * *

(j) *Electronic monitoring on catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* The owner or operator of a catcher/processor or a mothership must provide and maintain an electronic monitoring system that includes cameras, a monitor, and a digital video recording system for all areas where sorting of salmon of any species takes place and the location of the salmon storage container described at paragraph (d)(7) of this section. These electronic monitoring system requirements must be met when the catcher/processor is directed fishing for pollock in the BS, including pollock CDQ, and when the mothership is taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ.

(1) *What requirements must a vessel owner or operator comply with for an electronic monitoring system?*

(i) The system must have sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.). At a minimum, all periods of time when fish are flowing past the sorting area or salmon are in the storage container must be recorded and stored.

(ii) The system must include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iii) The system must use commercially available software.

(iv) Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(v) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period.

(vi) The system must provide sufficient resolution and field of view to observe all areas where salmon could be sorted from the catch, all crew actions in these areas, and discern individual fish in the salmon storage container.

(vii) The system must record at a speed of no less than 5 frames per second at all times when fish are being sorted or when salmon are stored in the salmon storage location.

(viii) A 16-bit or better color monitor, for viewing all areas where sorting of salmon of any species takes place and the salmon storage container in real time, must be provided within the observer sampling station. The monitor must—

(A) Have the capacity to display all cameras simultaneously;

(B) Be operating at all times when fish are flowing past the sorting area and salmon are in the storage container; and

(C) Be securely mounted at or near eye level.

(ix) NMFS staff, or any individual authorized by NMFS, must be able to view any earlier footage from any point in the trip and be assisted by crew knowledgeable in the operation of the system.

(x) A vessel owner or operator must arrange for NMFS to inspect the electronic monitoring system and maintain a current NMFS-issued electronic monitoring system inspection report onboard the vessel at all times the vessel is required to provide an approved electronic monitoring system.

(2) *How does a vessel owner arrange for NMFS to conduct an electronic monitoring system inspection?* The owner or operator must submit an Inspection Request for an Electronic Monitoring System to NMFS by fax (206–526–4066) or e-mail

(*station.inspections@noaa.gov).* The request form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section. NMFS will coordinate with the vessel owner to schedule the inspection no later than 10 working days after NMFS receives a complete request form.

(3) *What additional information is required for an electronic monitoring system inspection?*

(i) A diagram drawn to scale showing all locations where salmon will be sorted, the location of the salmon storage container, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the request form.

(ii) Any additional information requested by the Regional Administrator.

(4) *How does a vessel owner make a change to the electronic monitoring system?* Any change to the electronic monitoring system that would affect the system's functionality must be submitted to, and approved by, the Regional Administrator in writing before that change is made.

(5) *Where will NMFS conduct electronic monitoring system inspections?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(6) *What is an electronic monitoring system inspection report?* After an inspection, NMFS will issue an electronic monitoring system inspection report to the vessel owner, if the electronic monitoring system meets the requirements of paragraph (j)(1) of this section. The electronic monitoring system report is valid for 12 months from the date it is issued by NMFS. The electronic monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

■ 11. In § 679.50,

■ a. Revise paragraph (c)(1) introductory text, paragraph (c)(4)(iv), and (c)(5) heading; and

■ b. Add a new paragraph (c)(5)(i)(D).

The addition and revisions read as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(c) * * *

(1) Unless otherwise specified in paragraphs (c)(4) through (7) of this section, observer coverage is required as follows:

* * * * *

(4) * * *

(iv) *Catcher vessel using trawl gear*—(A) *Groundfish CDQ fishing.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel or a catcher vessel directed fishing for pollock CDQ in the BS, must have at least one level 2 observer as described at paragraph (j)(1)(v)(D) of this section aboard the vessel at all times while it is groundfish CDQ fishing.

(B) *BS pollock CDQ fishery.* A catcher vessel using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock CDQ in the BS.

* * * * *

(5) *AFA and AI directed pollock fishery.*

(i) * * *

(D) *AFA catcher vessels in the BS pollock fishery.* A catcher vessel using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock in the BS.

* * * * *

■ 12. In § 679.61, revise paragraph (f)(2)(vi) to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

* * * * *

(f) * * *

(2) * * *

(vi) The number of salmon taken by species and season, and list each vessel's number of appearances on the weekly "dirty 20" lists for non-Chinook salmon.

* * * * *

§§ 679.2, 679.5, 679.7, 679.20, 679.21, 679.26, 679.27, 679.28, 679.32, 679.61, and § 679.93 [Amended]

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

Location	Remove	Add	Frequency
§ 679.2 Definition "AFA trawl catcher/processor".	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.2 Definition for "Amendment 80 vessel" paragraph (2)(i).	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.5(c)(3)(v)(F) and (c)(4)(v)(G)	certified observer(s)	observer(s)	2
§ 679.5(c)(6)(v)(E)	certified observer(s)	observer(s)	1
§ 679.7(d)(18)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.20(a)(5)(i)(A)(*3*)(*i*)	§ 679.62(e)	§ 679.62(a)	1
§ 679.20(a)(7)(iii)(B)	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.21(e)(3)(v)	AFA trawl catcher/processor	AFA catcher/processor	2
§ 679.26(c)(1)	§ 679.7(c)(1)	§ 679.7(c)(2)	1
§ 679.27(j)(5)(iii)	§ 679.28(d)(7)(i)	§ 679.28(d)(8)(i)	1
§ 679.28(d)(2)(ii)	§ 679.28(d)(7)(ii)(A)	paragraph (d)(8)(ii)(A) of this section	1
§ 679.28(d)(2)(ii)	§ 679.28(d)(7)(ii)(B)	paragraph (d)(8)(ii)(B) of this section	1
§ 679.32(b)	§ 679.7(d)(7) through (10)	§ 679.7(d)(8)	1
§ 679.32(d)(2)(ii)(B)(*1*)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.32(d)(4)(ii)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.61(f)(1)	February 1	April 1	1
§ 679.93(c)(9)	§ 679.28(i)	§ 679.28(i)(1)	1

■ 14. Revise Figure 8 to part 679 to read as follows:

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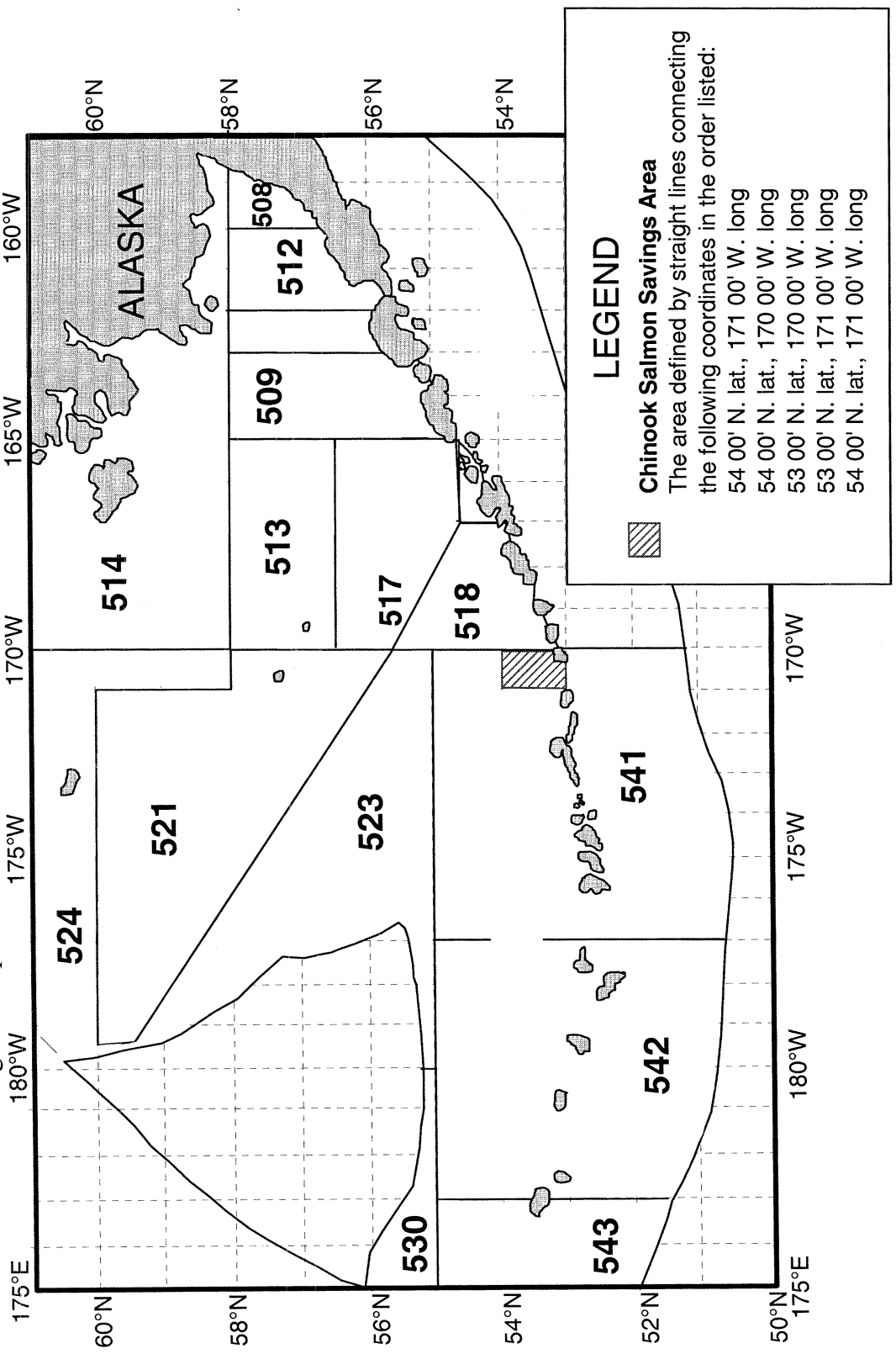
Figure 8 to part 679-- Aleutian Islands Chinook Salmon Savings Area



BILLING CODE 3510–22–C

■ 15. Tables 47a through 47d to part 679 are added to read as follows:

TABLE 47a TO PART 679—PERCENT OF THE AFA CATCHER/PROCESSOR SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER/PROCESSOR UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of C/P sector pollock	Number of Chinook salmon for the opt-out allocation (8,093)	Number of Chinook salmon for the opt-out allocation (8,093)	Number of Chinook salmon deducted from the annual threshold amount of 13,516	Percent used to calculate IPA minimum participation
Vessel name	USCG vessel documentation No.	AFA permit No.	Percent	A season	B season	Annual	Percent
American Dynasty	951307	3681	4.93	324	76	400	1.78
American Triumph	646737	4055	7.25	475	111	586	2.61
Northern Eagle	506694	3261	6.07	398	93	491	2.19
Northern Hawk	643771	4063	8.45	554	129	683	3.04
Northern Jaeger	521069	3896	7.38	485	113	598	2.66
Ocean Rover	552100	3442	6.39	420	98	518	2.30
Alaska Ocean	637856	3794	7.30	479	112	591	2.63
Island Enterprise	610290	3870	5.60	367	86	453	2.01
Kodiak Enterprise	579450	3671	5.90	387	90	477	2.13
Seattle Enterprise	904767	3245	5.48	359	84	443	1.97
Arctic Storm	903511	2943	4.58	301	70	371	1.65
Arctic Fjord	940866	3396	4.46	293	68	361	1.60
Northern Glacier	663457	661	3.12	205	48	253	1.12
Pacific Glacier	933627	3357	5.06	332	77	409	1.82
Highland Light	577044	3348	5.14	337	79	416	1.85
Starbound	944658	3414	3.94	259	60	319	1.42
Ocean Peace	677399	2134	0.50	33	8	41	0.18
Katie Ann	518441	1996	0.00	0	0	0	0.00
U.S. Enterprise	921112	3004	0.00	0	0	0	0.00
American Enterprise	594803	2760	0.00	0	0	0	0.00
Endurance	592206	3360	0.00	0	0	0	0.00
American Challenger	633219	4120	0.78	51	12	63	0.28
Forum Star	925863	4245	0.61	40	9	49	0.22
Muir Milach	611524	480	1.13	74	17	91	0.41
Neahkahnie	599534	424	1.66	109	25	134	0.60
Ocean Harvester	549892	5130	1.08	71	16	87	0.39
Sea Storm	628959	420	2.05	134	31	165	0.74
Tracy Anne	904859	2823	1.16	76	18	94	0.42
Total			100.00	6,563	1,530	8,093	36.00

TABLE 47b TO PART 679—PERCENT OF THE AFA MOTHERSHIP SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH MOTHERSHIP UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of MS sector pollock	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon deducted from the annual threshold amount of 3,707	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel Documentation No.	AFA Permit No.	Percent	A season	B season	Annual	Percent
American Beauty	613847	1688	6.000	96	37	133	0.54
Pacific Challenger	518937	657	9.671	154	60	214	0.87
Nordic Fury	542651	1094	6.177	99	39	138	0.55
Pacific Fury	561934	421	5.889	94	37	131	0.53

TABLE 47b TO PART 679—PERCENT OF THE AFA MOTHERSHIP SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH MOTHERSHIP UNDER § 679.21(f)—Continued

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of MS sector pollock	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon for the opt-out allocation (2,220)	Number of Chinook salmon deducted from the annual threshold amount of 3,707	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel Documentation No.	AFA Permit No.	Percent	A season	B season	Annual	Percent
Margaret Lyn	615563	723	5.643	90	35	125	0.51
Misty Dawn	926647	5946	3.569	57	22	79	0.32
Vanguard	617802	519	5.350	85	33	118	0.48
California Horizon	590758	412	3.786	61	24	85	0.34
Oceanic	602279	1667	7.038	112	44	156	0.63
Mar-Gun	525608	524	6.251	100	39	139	0.56
Mark 1	509552	1242	6.251	100	39	139	0.56
Aleutian Challenger	603820	1687	4.926	79	31	110	0.44
Ocean Leader	561518	1229	6.000	96	37	133	0.54
Papado II	536161	2087	2.953	47	18	65	0.27
Morning Star	618797	7270	3.601	57	23	80	0.32
Traveler	929356	3404	4.272	68	27	95	0.38
Vesteraalen	611642	517	6.201	99	39	138	0.56
Alyeska	560237	395	2.272	36	14	50	0.20
Western Dawn	524423	134	4.150	66	26	92	0.37
Total			100.000	1,596	624	2,220	9.00

TABLE 47c TO PART 679—PERCENT OF THE AFA INSHORE SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER VESSEL UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon deducted from the annual threshold amount of 26,485	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel documentation No.	AFA Permit No.	Percent	A Season	B Season	Annual	Percent
AJ	599164	3405	0.6958	69	41	110	0.31
Alaska Rose	610984	515	1.6835	167	100	267	0.76
Alaskan Command	599383	3391	0.3711	37	22	59	0.17
Aldebaran	664363	901	1.4661	146	87	233	0.66
Alsea	626517	2811	1.6635	165	99	264	0.75
Alyeska	560237	395	1.2192	121	72	193	0.55
American Beauty	613847	1688	0.0425	4	2	6	0.02
American Eagle	558605	434	1.0682	106	63	169	0.48
Anita J	560532	1913	0.4999	50	30	80	0.22
Arctic Explorer	936302	3388	1.6236	161	96	257	0.73
Arctic Wind	608216	5137	1.1034	110	65	175	0.50
Arcturus	655328	533	1.5450	153	91	244	0.70
Argosy	611365	2810	1.6330	162	97	259	0.73
Auriga	639547	2889	3.0981	308	184	492	1.39
Aurora	636919	2888	3.0990	308	184	492	1.39
Bering Rose	624325	516	1.7238	171	102	273	0.78
Blue Fox	979437	4611	0.3140	31	19	50	0.14
Bristol Explorer	647985	3007	1.5398	153	91	244	0.69
Caitlin Ann	960836	3800	0.9357	93	55	148	0.42
Cape Kiwanda	618158	1235	0.2282	23	13	36	0.10
Chelsea K	976753	4620	4.6467	462	275	737	2.09

TABLE 47c TO PART 679—PERCENT OF THE AFA INSHORE SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER VESSEL UNDER § 679.21(f)—Continued

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon deducted from the annual threshold amount of 26,485	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel documentation No.	AFA Permit No.	Percent	A Season	B Season	Annual	Percent
Collier Brothers	593809	2791	0.1534	15	9	24	0.07
Columbia	615729	1228	1.4429	143	85	228	0.65
Commodore	914214	2657	1.2595	125	75	200	0.57
Defender	554030	3257	3.4822	346	206	552	1.57
Destination	571879	3988	2.1528	214	128	342	0.97
Dominator	602309	411	1.7505	174	104	278	0.79
Dona Martita	651751	2047	2.1033	209	125	334	0.95
Elizabeth F	526037	823	0.3835	38	23	61	0.17
Excalibur II	636602	410	0.5200	52	31	83	0.23
Exodus Explorer	598666	1249	0.2990	30	18	48	0.13
Fierce Allegiance	588849	4133	0.9377	93	56	149	0.42
Flying Cloud	598380	1318	1.6410	163	97	260	0.74
Gold Rush	521106	1868	0.4062	40	24	64	0.18
Golden Dawn	604315	1292	1.7532	174	104	278	0.79
Golden Pisces	599585	586	0.2706	27	16	43	0.12
Great Pacific	608458	511	1.2361	123	73	196	0.56
Gun-Mar	640130	425	2.2201	221	132	353	1.00
Half Moon Bay	615796	249	0.5859	58	35	93	0.26
Hazel Lorraine	592211	523	0.3847	38	23	61	0.17
Hickory Wind	594154	993	0.3055	30	18	48	0.14
Intrepid Explorer	988598	4993	1.1458	114	68	182	0.52
Leslie Lee	584873	1234	0.5480	54	32	86	0.25
Lisa Melinda	584360	4506	0.2192	22	13	35	0.10
Majesty	962718	3996	0.9958	99	59	158	0.45
Marcy J	517024	2142	0.1799	18	11	29	0.08
Margaret Lyn	615563	723	0.0341	3	2	5	0.02
Mar-Gun	525608	524	0.1043	10	6	16	0.05
Mark I	509552	1242	0.0452	4	3	7	0.02
Messiah	610150	6081	0.2291	23	14	37	0.10
Miss Berdie	913277	3679	0.6110	61	36	97	0.27
Morning Star	610393	208	1.6981	169	101	270	0.76
Ms Amy	920936	2904	0.4882	48	29	77	0.22
Nordic Explorer	678234	3009	1.1045	110	65	175	0.50
Nordic Fury	542651	1094	0.0207	2	1	3	0.01
Nordic Star	584684	428	1.0103	100	60	160	0.45
Northern Patriot	637744	2769	2.4115	240	143	383	1.09
Northwest Explorer	609384	3002	0.2387	24	14	38	0.11
Ocean Explorer	678236	3011	1.3744	137	81	218	0.62
Morning Star	652395	1640	0.5290	53	31	84	0.24
Ocean Hope 3	652397	1623	0.4175	41	25	66	0.19
Ocean Leader	561518	1229	0.0545	5	3	8	0.02
Oceanic	602279	1667	0.1348	13	8	21	0.06
Pacific Challenger	518937	657	0.1680	17	10	27	0.08
Pacific Explorer	678237	3010	1.2895	128	76	204	0.58
Pacific Fury	561934	421	0.0121	1	1	2	0.01
Pacific Knight	561771	2783	2.1816	217	129	346	0.98
Pacific Monarch	557467	2785	1.5992	159	95	254	0.72
Pacific Prince	697280	4194	2.4099	239	143	382	1.08
Pacific Ram	589115	4305	0.2035	20	12	32	0.09
Pacific Viking	555058	422	1.0909	108	65	173	0.49
Pegasus	565120	1265	0.6950	69	41	110	0.31
Peggy Jo	502779	979	0.3324	33	20	53	0.15
Perseverance	536873	2837	0.2954	29	17	46	0.13
Poseidon	610436	1164	1.2411	123	73	196	0.56
Predator	547390	1275	0.1968	20	12	32	0.09
Progress	565349	512	1.0118	100	60	160	0.46
Providian	1062183	6308	0.3822	38	23	61	0.17
Raven	629499	1236	0.7116	71	42	113	0.32

TABLE 47c TO PART 679—PERCENT OF THE AFA INSHORE SECTOR'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CATCHER VESSEL UNDER § 679.21(f)—Continued

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
			Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon for the opt-out allocation (15,858)	Number of Chinook salmon deducted from the annual threshold amount of 26,485	Percent used to calculate IPA minimum participation
Vessel name	USCG Vessel documentation No.	AFA Permit No.	Percent	A Season	B Season	Annual	Percent
Royal American	624371	543	0.9698	96	57	153	0.44
Royal Atlantic	559271	236	1.3095	130	78	208	0.59
Sea Wolf	609823	1652	1.5156	151	90	241	0.68
Seadawn	548685	2059	1.4108	140	84	224	0.63
Seeker	924585	2849	0.3695	37	22	59	0.17
Sovereignty	651752	2770	2.3513	234	139	373	1.06
Star Fish	561651	1167	1.5114	150	90	240	0.68
Starlite	597065	1998	1.2252	122	73	195	0.55
Starward	617807	417	1.2611	125	75	200	0.57
Storm Petrel	620769	1641	1.2334	123	73	196	0.56
Sunset Bay	598484	251	0.5596	56	33	89	0.25
Topaz	575428	405	0.0828	8	5	13	0.04
Traveler	929356	3404	0.0413	4	2	6	0.02
Vanguard	617802	519	0.0565	6	3	9	0.03
Viking	565017	1222	1.6575	165	98	263	0.75
Viking Explorer	605228	1116	1.1881	118	70	188	0.53
Walter N	257365	825	0.4031	40	24	64	0.18
Western Dawn	524423	134	0.3952	39	23	62	0.18
Westward I	615165	1650	1.5544	154	92	246	0.70
Total			100.00	9,933	5,925	15,858	45.00

TABLE 47d TO PART 679—PERCENT OF THE CDQ PROGRAM'S POLLOCK ALLOCATION, NUMBERS OF CHINOOK SALMON USED TO CALCULATE THE OPT-OUT ALLOCATION AND ANNUAL THRESHOLD AMOUNT, AND PERCENT USED TO CALCULATE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH CDQ GROUP UNDER § 679.21(f)

Column A	Column B	Column C	Column D	Column E	Column F
	Percent of CDQ Program pollock	Number of Chinook salmon for the opt-out allocation (2,325)	Number of Chinook salmon for the opt-out allocation (2,325)	Number of Chinook salmon deducted from the annual threshold amount of 3,883	Percent used to calculate IPA minimum participation
CDQ group	Percent	A season	B season	Annual	Percent
APICDA	14.00	260	66	326	1.40
BBEDC	21.00	389	99	488	2.10
CBSFA	5.00	93	23	116	0.50
CVRF	24.00	445	113	558	2.40
NSEDC	22.00	408	103	511	2.20
YDFDA	14.00	260	66	326	1.40
Total	100.00	1,855	470	2,325	10.00

[FR Doc. 2010–20618 Filed 8–27–10; 8:45 am]

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Federal Register

Monday,
August 30, 2010

Part III

Department of Defense

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy), (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, as amended (title 10, U.S.C. 2358 note) by section 1109 of NDAA for FY 2000 and section 1114 of NDAA for FY 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as STRLs. The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1107 of Public Law 110–181, as amended by section 1109 of Public Law 110–417 requires the Secretary of Defense to execute a process and plan to employ the personnel management demonstration project authorities granted to the Office of Personnel Management under section 4703, title 5, U.S.C., at the STRLs enumerated in section 9902(c)(2) of title 5, U.S.C., as redesignated in Public Law 111–84, section 1105, and 73 *FR* 73248, to enhance the performance of these laboratories. AFRL is listed as one of the designated STRLs.

This notice announces the approval of an amendment to modify existing demonstration project initiatives, to adopt flexibilities from other Science and Technology Reinvention Laboratories (STRLs) enumerated in section 9902(c)(2) of title 5, United States Code (U.S.C.), as redesignated in Public Law 111–84, section 1105, and to expand coverage of the AFRL Personnel Demonstration Project to AFRL employees in Business Management and Professional, Technician, and Mission Support occupations.

DATES: The adoption of the listed STRL demonstration project flexibilities and expansion of coverage of the personnel management demonstration project to the remaining eligible AFRL employees may be implemented beginning on the date of publication of this notice in the **Federal Register**. Implementation of the flexibilities will be through AFRL implementing issuances and notices to appropriate stakeholders.

FOR FURTHER INFORMATION CONTACT:

AFRL: Ms. Michelle Williams, AFRL/DPL, 1864 4th Street, Wright-Patterson AFB, Ohio 45433–7130.

DoD: Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

The STRL demonstration projects are "generally similar in nature" to the Navy's China Lake Demonstration Project. The terminology "generally similar in nature" does not imply an emulation of various features, but rather "that the effectiveness of Federal laboratories can be enhanced by allowing greater managerial control over personnel functions," * * * which * * * "can help managers to operate with more authority, responsibility, and skill to increase work force and organizational effectiveness and efficiency." [1]

In August 1994, a special action "Tiger Team" was formed by the Director of Science and Technology for Air Force Materiel Command in response to the proposed DoD legislation allowing reinvention laboratories to conduct personnel demonstration projects. The team was chartered to take full opportunity of this legislation and develop solutions that would alleviate or resolve many of the prevalent and well-documented Laboratory personnel issues. The team composition included managers from the original four Air Force Laboratories (which merged and became AFRL in August 1997), retired and current Laboratory directors, and subject matter experts from civilian personnel and manpower. This team developed 27 initiatives which together represented sweeping changes in the entire spectrum of human resource management for the Laboratory. Several initiatives were designed to assist the Laboratory in hiring and placing highly-qualified Scientist and Engineer (S&E) candidates to fulfill mission requirements. Others focused on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to effectively manage workforce turnover and maintain organizational excellence were also developed. These 27 initiatives were endorsed and accepted in total by the four Laboratory Commanders.

After the authorizing legislation passed, a Demonstration Project Office with four employees was established in September 1994. Under the guidance of the Air Force Materiel Command Director of Science and Technology, the Project Office was charged with further developing and implementing the demonstration concept. Initially, the Project Office solicited volunteers from across the then four Laboratories and the servicing civilian personnel offices to staff six integrated product teams. Sixty civilian managers and employees from most of the four Laboratories' geographic locations and appropriate base level personnel offices worked for nine months to develop the detailed concept and implementation for each initiative.

After a thorough study, the original 27 initiatives were reduced to 20. Seven of these initiatives were published in the original **Federal Register** and appear herein. The remaining initiatives were subject to either DoD or AF regulation and waivers were sought at those levels.

2. Overview

This **Federal Register** notice (FRN) supersedes the four previous AFRL Demonstration Project FRNs. Substantive changes include updating the Demonstration Project Reduction-in-Force (RIF) procedures; expanding the coverage of the Demonstration Project to include AFRL employees in Business Management and Professional, Technician, and Mission Support occupations; and the ability to establish an Above GS–15 authority (broadband level V). In this FRN, AFRL is also adopting flexibilities from other STRL personnel demonstration projects. Additional flexibilities include using an alternative examining process; implementing the Distinguished Scholastic Achievement Appointment authority; expanding the use of temporary promotions and details; authorizing pay setting flexibilities; and requiring the Demonstration Project to be cost disciplined. Also, the expanded plan reduces the number of factors from six to four, with corresponding descriptors for each broadband level in a career path.

AFRL requested no waivers to veterans' preference statutes. Therefore, AFRL will fully comply with all veterans' preference act obligations.

The original AFRL Personnel Management Demonstration Project plan was published in 61 FR 60399, November 27, 1996. This Demonstration Project plan involves simplified, delegated position classification; two

[1] Federal Register, Vol. 45, No. 77, Friday, April 18, 1980, Proposed Demonstration Project: An Integrated Approach to Pay, Performance Appraisal, and Position Classification for More Effective Operation of Government Organizations.

types of appointment authorities; an extended probationary period; broadbanding; and a Contribution-based Compensation System (CCS). Three amendments to the final plan were published in the **Federal Register**. The first amendment to clarify which employees are subject to the extended probationary period; provide the CCS bonus to eligible employees subject to the General Schedule (GS) 15, step 10 pay cap; and change the names of the descriptor "Cooperation and Supervision" and CCS Factor 6, "Cooperation and Supervision," to "Teamwork and Leadership" was published in 65 FR 3498, January 21, 2000. The second amendment changed the amount of time required to be assessed under CCS from 180 to 90 calendar days and was published in 70 FR 60495, October 18, 2005. The third amendment eliminating mandatory factor weights was published in 74 FR 15463, April 6, 2009.

Flexibilities published in this **Federal Register** notice shall be available for use by all STRLs listed in section 9902(c)(2) of title 5, United States Code, as redesignated in Public Law 111–84, section 1105, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and the fulfilling of any collective bargaining obligations.

3. Summary of Comments

Nine e-mails from nine commenters containing numerous comments were received regarding the AFRL Laboratory Demonstration Project, **Federal Register**, 75 FR 27866, dated May 18, 2010. The following is a summary of these written comments by topical area and a response to each. In some cases, commenters were contacted directly and provided extensive replies to their comments.

(1) Problems With the Present System

Comments: One commenter expressed his concern about his perception of the routine filling of certain vacant positions such as senior program management, deputy chief information officer, deputy director, *etc.,* with personnel who possess a scientific or engineering degree which reduces job opportunities for individuals assigned to other professional series.

Response: Managers must still identify each position to the proper series based on the duties of the position. The Demonstration Project believes that first and second-level supervisors are in the best position to determine the appropriate occupational series needed to satisfy mission requirements. Such flexibility is key to the success of the Demonstration Project. The issues raised by the commenter are not specific to the Demonstration Project and should be addressed through other mechanisms, such as "Ask the Commander" forums or discussions within the technology directorate.

Comments: A commenter asked a series of questions as to whether job analyses were completed prior to the initial implementation of the Demonstration Project and prior to the expansion of the Demonstration Project.

Response: While job analyses are one acceptable way of designing a new performance management system, AFRL senior management chose not to use this methodology. Rather, AFRL utilized existing Office of Personnel Management (OPM) classification standards, which have been determined by OPM to be reliable and valid, to design the classification and CCS factors and descriptors used within the Demonstration Project. AFRL did not have total independence in designing this system because of the requirement to remain competitive with other Federal agencies. Due to the provision of seamless broadband movement, which is one of the signature initiatives being tested in the AFRL demonstration project, it was critical that the performance management system (CCS) and, in particular, the factors and descriptors, be tied to the established Federal Classification System. While OSD now has approval authority, OPM and OSD were highly involved in the original design of the factors and descriptors used in the classification and CCS processes. By approving the 1996 AFRL **Federal Register** notice publication, DoD and OPM signaled their agreement with the validity of the classification and CCS processes. The same methodology was used for the expanded workforce that was used in the 1990s for the S&Es.

Comments: One commenter expressed concern about her perception that the Demonstration Project was not successful.

Response: A survey has been conducted bi-annually since the inception of the Demonstration Project. Survey results show approximately 80% of AFRL Demonstration Project employees are in favor of the Demonstration Project and show a high level of support for expansion of the Demonstration Project authorities to the non-bargaining unit members.

(2) Participating Employees and Labor Participation

Comments: A commenter expressed concern about his perception that inclusion of bargaining unit positions in the Demonstration Project would not be negotiated in good faith. The commenter suggested that the AFRL and Air Force Material Command (AFMC) Commanders or the Chief of Staff of the Air Force personally engage in all future Demonstration Project union negotiations and include Federal Mediation and Conciliation Service involvement.

Response: AFRL is currently in communication with potentially affected unions. After publication of the final **Federal Register** notice, AFRL will work with affected unions to negotiate openly to reach a consensus position on this important issue at appropriate levels and times.

(3) Description of Hiring Process

Comments: A commenter suggested that the **Federal Register** notice should clearly state what veterans' preference hiring obligations are under the Demonstration Project and how compliance is being measured in a public and transparent manner. The commenter also suggested establishing and measuring (through CCS) goals for veterans' preference interviews and hiring under the Demonstration Project. Additionally, the commenter stated that veterans' preference applies to merit promotions under the GS system and inquired as to how it pertains to broadband movements in the Demonstration Project.

Response: AFRL requested no waivers to veterans' preference rules and regulations. Therefore, AFRL will fully comply with all veterans' preference obligations. Clarifying language has been added to the Overview section of this **Federal Register** notice. Additionally, AFRL monitors its external hiring of veterans to ensure they are treated fairly in the selection process. Results are briefed semi-annually to the AFRL Corporate Board, a body of senior leaders within the Laboratory. It is noted that veterans' preference does not apply to merit promotions in the GS system or to broadband movements in the Demonstration Project.

Comments: One commenter recommended that the Distinguished Scholastic Achievement Appointment Authority include candidates who are within the top 10 percent of a university's major school of undergraduate studies.

Response: Recommendation has been adopted.

Comments: OSD has indicted that the Distinguished Scholastic Achievement Appointment Authority may not be the appropriate venue for an expedited hiring authority for the occupational series in the Business Management and Professional career path (DO broadband). Additional research on hiring difficulties for these positions, the new OPM hiring reform initiatives, use of current expedited hiring authorities covering some of the DO positions, and potential impact on OPM qualifications standards may be warranted.

Response: The Distinguished Scholastic Achievement Appointment Authority will not be utilized for the Business Management and Professionals at this time. AFRL will work with OSD on possible streamlined hiring initiatives for various positions within the DO career path at a later date. The Description of Hiring section has been updated to reflect this change.

Comments: One commenter recommended removing the following words from the criteria for converting an employee serving on a modified term appointment to a career appointment: "Be selected under merit staffing procedures for the permanent position." The employee would have been initially selected under competitive procedures and there is no requirement to apply merit system principles again to fill the position permanently.

Response: Recommendation has been adopted.

Comments: A commenter recommended clarifying that since one of the requirements for a non-competitive conversion of a modified term employee is to have served a minimum of two years of continuous service in the term appointment this period of employment may be counted toward the completion of the extended probationary period.

Response: Clarification has been added to the Extended Probationary Period Section.

Comments: A commenter stated that AFRL must ensure that opportunities for non-competitive temporary promotions and details are based on the criteria in title 5, Code of Federal Regulations (CFR) 335.103(b)(1).

Response: This **Federal Register** notice waives 5 CFR 335.103(c) to allow for non-competitive temporary promotions and details in excess of 120 days. However, AFRL will ensure decisions are made consistent with merit principles; are based on job-related criteria as spelled out in 5 CFR 335.103(b)(1); and will require appropriate approvals on all actions. Implementing instructions will be described in internal AFRL issuances.

Comments: A commenter inquired as to whether expanded temporary promotions and details will be limited to actions within the same career path.

Response: Temporary promotions and details are permitted across career paths provided qualification requirements are met.

Comments: A commenter requested clarification as to how the Broadbanding Structure table, in the Broadbanding section, will be used for initial employee conversion into the Demonstration Project.

Response: The commenter is referring to the methodology used to establish the banding structure. This should not be confused with the determination of what band an employee will be placed in upon conversion into the Laboratory Demonstration Project. Employees will move into the career path and broadband level that coincides with their permanent GS grade and occupational series, unless their basic salary falls outside the pay range, a situation which would require a special review. For clarification, the Conversion to the Demonstration Project section has been changed to state "Employees are converted into the career path and broadband level which includes their permanent GS/GM grade and occupational series of record, unless there are extenuating circumstances which require individual attention, such as special pay rates or pay retention."

Comments: A commenter pointed out that there is no mention of a temporary appointment authority (only career and modified term).

Response: The Demonstration Project will continue to use the temporary appointment authority as provided under title 5, U.S.C. and title 5, CFR. Clarifying language has been added.

(4) Pay Setting Outside the CCS

Comments: A commenter recommended that a bonus may be given in lieu of a basic pay increase.

Response: Recommendation has been adopted.

Comments: A commenter recommended that "CCS bonus" be referred to as "CCS incentive."

Response: Recommendation was considered but not adopted. "CCS bonus" better describes the intent of this authority.

Comments: The same commenter recommended that retention, recruitment, and relocation "payments" be referred to as retention, recruitment, and relocation "incentives."

Response: Recommendation has been adopted.

Comments: A commenter expressed concern that the authority to grant a relocation bonus to a Student Career Experience Program (SCEP) student could be abused. The commenter also recommended that a Continuing Service Agreement (CSA) be required for SCEP students receiving a relocation bonus and suggested that management ensure that their home of record is not located within the commuting area of the work location.

Response: Safeguards are being put in place through internal AFRL issuances. Management will be required to justify each bonus granted and maintain documentation to this effect. The recommendation to require a CSA was considered but not adopted. A student's home of record will be documented and maintained by management.

Comments: A commenter suggested specific minimum requirements (*e.g.,* length of time, CCS rating, *etc.*) that must be met before a basic pay increase can be granted under the accelerated compensation authority for local interns or risk rampant accelerated compensation, which will impact the Demonstration Project cost discipline philosophy.

Response: Safeguards, such as minimum delta Overall Contribution Score (OCS) and one basic pay increase per year, are being implemented through internal AFRL issuances.

(5) Broadbanding

Comments: A commenter pointed out that in paragraph 3, reference to "Table 2" should be "Table 1."

Response: The reference to this table was changed.

Comments: A commenter expressed concern that there could be a potential issue in recruiting for broadband level I, at the GS–7 equivalency, due to the education requirements and/or applicants' lack of required specialized experience. There would be more flexibility for management if the broadband level I began at the GS–5 equivalency versus the GS–7 equivalency in the DO career path.

Response: Comment was considered. Management made a conscious decision to set the minimum equivalent grade at the GS–7 for the DR and DO career paths. The DR career path has been set at this level since the inception of the Demonstration Project and senior management was not willing to reduce expectations for the DO career path.

Comments: A commenter had concerns over using the same number structure for the different broadbands in the different career paths.

Response: The assigned pay plan (*i.e.,* DR, DO, DU, or DX) first identifies the

career path for a given position/person. The broadband level (*i.e.,* I, II, III, or IV) is then assigned based on the duties of the position. This is an accepted nomenclature and the same structure used by other demonstration projects and alternative personnel systems.

Comments: The commenter had concerns about the lack of information in the **Federal Register** notice regarding broadband V positions.

Response: The broadband V (or Above GS–15) position concept is an OSD initiative that was tested in Army and Navy Laboratory demonstration projects. AFRL did not participate in the initial trial of this concept, which consisted of 40 positions. This FRN provides a basic description of broadband V positions. OSD will publish a **Federal Register** notice and manage the final authority, to include salary ranges, for these positions. OPM has been consulted by OSD on this initiative and is interested in the proposal.

(6) Classification

Comments: In the Classification Authority and Reduction-in-Force sections, a commenter noted that "technical director" should read "technology director."

Response: This was changed.

Comments: Under Classification Process, recommend that pay plan and broadband level be added to the second sentence of paragraph (a).

Response: Recommendation has been adopted.

Comments: A comment was received regarding application of acquisition professional development requirements to positions and the impact on broadband movements.

Response: This Demonstration Project **Federal Register** notice documents changes to title 5, U.S.C. and to title 5, CFR. These suggestions are not a part of either title 5 requirements and therefore, are not appropriate for **Federal Register** publication. However, AFRL follows Defense Acquisition Workforce Improvement Act (DAWIA) requirements for coding acquisition positions. The Demonstration Project must operate within the DAWIA laws and, as such, ensures that these requirements are met prior to allowing seamless, competitive, or non-competitive broadband movements to occur.

Comments: Comments were received as to what level the Classification Authority may be delegated.

Response: This authority is delegated to the technology directors or pay pool managers, who may further delegate to not lower than one management level above the first-level supervisor of the position under review. Clarification has been added to the Classification Authority section.

Comments: Recommend that language be clarified to include that supervisors or Senior Personnel Advisors (SPAs) may create an electronic Statement of Experience and Duties (SDE).

Response: Recommendation has been adopted.

(7) CCS

Comments: Commenters expressed concerns about their perceptions regarding equity and fairness of quantitative ratings of individual employee performance and indicated support of qualitative measures of group performance instead. Also, comments were received on how one's opportunity for advancement may be impacted by the pay pool to which assigned. Therefore, the commenters support the use of one AFRL-wide pay pool.

Response: The concerns regarding quantitative ratings and the commenter's support of qualitative measures were very technical in nature and have therefore been directly addressed in detail to the commenter.

In regard to the concern over advancement opportunities, the use of multiple pay pools allows employees to be assessed in an environment where a number of managers are aware of each employee's contribution relative to his/her peers. An AFRL-wide pay pool would be unwieldy and would not yield the checks and balances currently in place with the directorate-based pay pools.

Comments: A commenter questioned the reliability of factor weights.

Response: While the November 1996 AFRL **Federal Register** notice and April 2009 **Federal Register** notice described use of factor weights, it is now AFRL's intent not to utilize factor weights with the change to four factors for S&Es and establishment of four factors for the expanded workforce. Therefore, the description of factor weights was not in the May 2010 **Federal Register** notice publication, nor in this one. This publication supersedes all previous **Federal Register** notices.

Comments: A comment was received that the **Federal Register** notice makes no mention of how long-term additional duties or Integrated Project Team duties may be used to increase an employee's contribution level.

Response: The AFRL contribution-based system empowers employees to seek additional opportunities which are taken into consideration when determining overall contribution level. Long-term additional duties and team participation are examples of opportunities which may impact an employee's CCS score and should be discussed in feedback sessions between the employee and supervisor. The CCS factors and descriptors are tools that may be used as the employee's roadmap to higher level contribution.

Comments: A commenter expressed concern over the lack of information on a CCS bonus.

Response: The authority to authorize a bonus was included in this **Federal Register** notice in order to provide supervisors and managers access to an additional tool to appropriately recognize outstanding contributions based on the level and type of contributions as well as their overall impact on mission. AFRL does not intend to utilize this bonus authority until a determination has been made as to the need and adequate processes are implemented to describe how this bonus will be paid. AFRL implementing issuances will be updated prior to the use of this authority.

Comments: A commenter cited concerns about her perception of fairness and transparency of the Meeting of Managers (MoM), CCS, and the seamless broadband movement process.

Response: The MoM is a process that allows supervisors to discuss employee contributions and come to agreement on equivalent levels of contribution. Every employee is encouraged to provide details to their supervisor of their yearly accomplishments for each factor. This helps supervisors understand how employees perceive their work and its role in helping to meet the mission. Supervisors use these self-assessments and their own knowledge of each employee's contributions as a starting point for determining preliminary CCS scores. Overall Contribution Scores are not assigned by individual supervisors; rather they are assigned by the group of supervisors attending the MoMs. This process reduces possible unfairness issues when only one person assigns a score, encourages communication within the directorate, and includes extra layers of checks and balances by providing a mechanism to ensure equitability of scores across branches and divisions and, ultimately, the directorate/pay pool. Supervisors discuss contributions with each employee after scores have been finalized. Employees may utilize the grievance process, which provides for third party review, if they do not agree with the CCS score assigned.

To facilitate transparency and openness in the CCS process, there are two mandatory feedback sessions built into the CCS process. Supervisors are

required to discuss employee contributions, professional development and training needs, and expectations with each employee after the rating cycle ends and midway through the cycle. In addition, supervisors and employees are encouraged to maintain open lines of communication and discuss expectations throughout the year.

The seamless broadband movement is facilitated by increases in score and basic pay based on the assessment of employee contributions, as well as consideration of many other aspects. As stated in the Broadband Movement section, "If an employee's contributions impact and broaden the scope, nature, intent and expectations of the position and are reflective of higher level factor descriptors, the classification of the position is updated accordingly." In addition, an employee's basic pay must be at a level consistent with the higher broadband level. Therefore, two employees may receive the same score but broadband movement may not be appropriate for both employees. An employee's proven ability to maintain the higher level contribution, level of education, completion of Professional Military Education (PME), breadth of experience, and demonstrated leadership are all factors in a Pay Pool Manager's decisions when approving broadband movements. The mandatory feedback sessions and open lines of communication between employees and supervisors provide employees with expectations so that employees understand what is needed for a broadband movement. This provides transparency and openness in the seamless broadband movement process.

Additionally, the AFRL Corporate Board reviews the extensive evaluations that are conducted after each rating cycle and issues corporate guidance on managing pay pools to ensure consistency, greater transparency, etc. Bi-annual surveys of all employees are conducted and, based upon results, focus groups or additional surveys are accomplished in order to identify, and then correct, unintended consequences or negative perceptions. Supervisors are required to take mandatory courses on the CCS process, CCS software, and providing effective CCS feedback. Technology directorate-specific continuing training is also offered to employees.

Comments: A commenter presented a lengthy technical paper expressing concern over the design of the Contribution-based Compensation System.

Response: A paper addressing these concerns was sent directly to the commenter. No changes were made to the CCS design as a result of this comment.

(8) SPL

Comments: One commenter pointed out that the Mission Support SPL and the Technician SPL are transposed.

Response: The Mission Support SPL and the Technician SPL are now correct.

(9) Pay Pools

Comments: A commenter expressed concerns that a pay pool of 35 employees would be too small to yield statistically valid results.

Response: A pay pool of 35 is consistent with the approach used by OPM for other demonstration projects. The AFRL pay pools are defined by technology directorate/functional area to implement the "same mission" principal. With this definition, the smallest pay pool for the 2009 cycle had 59 employees.

In the Demonstration evaluation effort, only descriptive statistics are used at the pay pool level of analysis. The entire Laboratory Demonstration Project population is used for more complex statistical analyses that use confidence intervals. This minimizes the potential for any group of interest in a given analysis to be so small that the resulting confidence interval is so large as to mask important differences in results for the groups. AFRL senior leadership reviews CCS results on a yearly basis and is satisfied with the results of the statistical analysis.

(10) Broadband Level Movements

Comments: One commenter expressed concern over a lack of information as to whether an employee could be moved to a higher broadband level if his or her immediate supervisor is at the higher broadband level. For example, could an employee be moved to a broadband level III if their supervisor is a broadband level III?

Response: The Demonstration system is not hierarchical; meaning a supervisor's broadband level is based on the contributions he/she has made to the organization, and not based on the broadband levels of subordinate employees, as is typical under other personnel systems. Therefore, supervisors may supervise employees at lower, the same, or higher broadband levels. Due to the comment received, clarifying language was added to the Classification section of this **Federal Register** notice.

Comments: A commenter asked if a specified amount of growth or delta is required for broadband movement.

Response: A broadband movement may be granted when the employee consistently contributes at the level as described in the broadband level descriptors for the next higher broadband level, receives basic pay commensurate with the higher broadband level, demonstrates the ability to maintain the higher level contribution, and has met any additional criteria established by the Pay Pool Manager. As described in greater detail in the Broadband Movement section of this notice, broadband movement is based on a combination of OCS and basic pay. Delta is not a direct contributing factor to broadband movement. However, continual growth, which is the difference between current and previous year's score, would be an indication of consistently contributing at higher levels.

Comments: A commenter expressed a concern that employees may be assigned duties outside their SDE and perhaps would not be given appropriate job skills/experience coding.

Response: The SDE has been structured generally so that employees may seek opportunities for additional experience and contribution. If the skill codes of a position change over time, a personnel action is processed to document this change.

(11) Voluntary Pay Reduction and Pay Raise Declination

Comments: One commenter recommended including that a voluntary pay reduction or pay raise declination could also be requested by employees during the 30-day period immediately following a CCS grievance decision.

Response: Recommendation has been adopted.

(12) Voluntary Emeritus Corps

Comments: A commenter recommended requiring that volunteers not be permitted to report for duty prior to finalization of the required agreement.

Response: Recommendation has been adopted.

(13) Conversion

Comments: For clarification, a commenter recommended rewording the first sentence of the Conversion to Another Personnel System section to state: The pay-setting rules of the gaining pay system will apply when employees leave the AFRL broadbanding system to accept Federal employment in another personnel system.

Response: Suggestion is adopted.

Comments: A commenter requested clarification as to whether, and to what extent, a supervisor has the discretion to set the initial broadband level for converting employees.

Response: Supervisors will not make the initial broadband level determination upon conversion. For clarification, the Conversion to the Demonstration Project section has been changed to state "Employees are converted into the career path and broadband level which includes their permanent GS/GM grade and occupational series of record, unless there are extenuating circumstances which require individual attention, such as special pay rates or pay retention.

(14) Reduction-in-Force

Comments: One commenter recommended that trial period employees also be included in tenure group I for RIF purposes.

Response: Recommendation has been adopted. Clarification as to who serves probationary and trial periods, and how it impacts RIF, was added to the RIF and Probationary Period sections.

Comments: A commenter suggested clarification as to how contribution will affect RIF retention.

Response: There are no additional years of service added to service computation dates based on contribution scores, rather, contribution scores are used as a sort factor. The Reduction-in-Force section has been clarified.

(15) Appendix A

Comments: For occupational series 0199, change Social Science Student to Social Science Student Trainee. Also, for occupational series 0401, change Trainee General Biological Science to General Biological Science.

Response: Changes are accepted.

Comments: The list of DO pay plan occupational series was inadvertently truncated. Recommend the following occupational series be included: 0018 Safety and Occupational Health Management, 0028 Environmental Protection Specialist, 0030 Fitness and Sports Specialist, 0080 Security Administration, 0099 Security Student Trainee, 0101 Social Scientist, 0110 Economist, 0669 Medical Records Administration, 1040 Language Specialist, 1060 Photography, 1071 Audiovisual Production, 1082 Writing and Editing, 1083 Technical Writing and Editing, 1084 Visual Information.

Response: These DO occupational series are added.

(16) Waivers to title 5, CFR

Comments: Recommend part 213, section 213.3202, Tenure Group, be waived to allow Excepted Service employees to be in tenure group I.

Response: Recommendation has been adopted.

Comments: Recommend that part 340, subpart A, subpart B, and subpart C, Other than Full-Time Career Employment, be waived to also allow for Excepted Service employees to be in tenure group I.

Response: Recommendation has been adopted.

(17) Professional Military Education (PME) Requirement

Comments: A commenter recommended that the Demonstration Project include a permanent provision that graduation from the in-residence United States Air Force Senior Noncommissioned Officer Academy permanently satisfies the AFMC Professional Military Education (PME) requirement.

Response: The Demonstration Project **Federal Register** notice documents changes to title 5, U.S.C. and title 5, CFR. This suggestion is outside the scope of both title 5, U.S.C. and title 5, CFR requirements and therefore, is not appropriate for **Federal Register** publication. As the commenter noted, policies related to this matter have been crafted at the HQ AFMC level.

Dated: August 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Table of Contents

I. Executive Summary

The original Project was designed by the Department of the Air Force (AF), with participation of and review by the DoD and the Office of Personnel Management (OPM). The purpose was to achieve the best workforce for the Laboratory mission, prepare the workforce for change, and improve workforce quality. The Project framework addressed all aspects of the human resources life cycle model. There were three major areas of change: (1) Laboratory-controlled rapid hiring; (2) a Contribution-based Compensation System; and (3) a streamlined removal process.

Initially, the Project covered only professional S&E positions and employees. This **Federal Register** notice incorporates a design for coverage of not only S&E employees but also the AFRL employees in Business Management and Professional, Technician, and Mission Support occupations.

II. Introduction

A. Purpose

The purpose of the Project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. This Demonstration Project, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality Laboratory and quality products.

B. Problems With the Present System

The success of the Demonstration Project for S&E personnel has convinced AFRL management that the same system should be implemented for the remaining AFRL workforce. The Laboratory Demonstration Project implemented a broadbanding structure that replaced the 15 grades under the GS classification structure. This flexibility has enabled management to offer competitive starting salaries and seamlessly progress employees through the broadband levels based on contribution to the mission. The CCS has provided management an effective, efficient, and flexible method for

assessing, compensating, and managing the S&E workforce. CCS has created more employee involvement in the assessment process, increased communication between supervisors and employees, promoted a clear accountability of contribution, facilitated employee career progression, and provided an understandable basis for basic pay changes.

The civilian GS personnel system has several major inefficiencies, which hinder management's ability to recruit and retain the best-qualified personnel. Line managers have only limited flexibility to administer personnel resources, and existing personnel regulations are often in conflict with management's ability to support world-class research. Current personnel action processes cause delays in recruiting, reassigning, promoting, and removing employees. AFRL received no hiring authorities with the initial Demonstration Project implementation. Laboratories that implemented their authorities at a later time received hiring flexibilities that AFRL now wishes to pursue.

The GS classification system requires lengthy, narrative, individual position descriptions, which have to be classified by the use of complex and often outdated position classification standards. The classification process under the AFRL Demonstration Project has been highly successful, can be accomplished quickly and efficiently, and has given managers control over their workforce.

The current RIF system, for both GS and demonstration project employees, does not adequately recognize contribution as a major criterion in RIF situations. The RIF rules are complex and difficult to understand and administer. The RIF process disrupts operations, due to displacement of employees within their competitive levels and in the exercise of bump and retreat rights.

The same flexibilities for attracting and retaining highly talented employees from which AFRL currently benefits for the S&E workforce should not be limited to the S&E career path. The success of the Laboratory is dependent on its total workforce not just S&E personnel; thus, the demonstration project flexibilities should be extended to the entire Laboratory workforce. The new authorities will provide additional management tools that will enable AFRL to attract and retain the best and brightest employees for all career paths.

C. Changes Required/Expected Benefits

The AFRL Demonstration Project has demonstrated that a human resource system tailored to the mission and needs of the Laboratory results in: (a) Increased quality of the workforce and the Laboratory products they produce; (b) increased timeliness of key personnel processes; (c) trended workforce data that reveals increased retention of "excellent contributors" and increased separation rates of "poor contributors;" and (d) increased employee satisfaction with the Laboratory.

D. Participating Employees and Labor Participation

There are approximately 5,025 employees assigned to AFRL, with the majority located in or at Arlington, Virginia; Brooks City Base, Texas; Edwards Air Force Base (AFB), California; Eglin AFB, Florida; Hanscom AFB, Massachusetts; Kirtland AFB, New Mexico; Rome, New York; Tyndall AFB, Florida; and Wright-Patterson AFB, Ohio. Employees are also located at sites around the world.

Of the 5,025 AFRL employees, approximately 2,630 are currently in the Demonstration Project. The National Federation of Federal Employees (NFFE) and the American Federation of Government Employees (AFGE) represent professional and nonprofessional employees at many sites within AFRL. At this time, there are approximately 140 employees in the NFFE and AFGE bargaining units that are in the Demonstration Project. AFRL is proceeding to fulfill its obligation to consult or negotiate with the unions, as appropriate, in accordance with 5 U.S.C. 4703(f) and 7117. AFRL plans to initially convert the non-bargaining unit workforce into the Project with the hope of successfully negotiating with the impacted unions to convert the remaining Business Management and Professional, Technician, and Mission Support workforce into the Project at a later date.

In determining the original scope of the Demonstration Project, primary consideration was given to the number and diversity of occupations within the Laboratory and the need for adequate development and testing of the Contribution-based Compensation System. Additionally, DoD human resource management design goals and priorities for the entire civilian workforce were considered. While the intent of this Project is to provide the AFRL Commander/Executive Director and subordinate supervisors with increased control and accountability for their total workforce, the decision was made to initially restrict development efforts to GS/GM positions within the professional S&E specialties.

With this expansion effort, a total of 155 occupational series are included in the Project. During the course of the Project, other series may be included or moved to a more appropriate career path. For instance, a path for physicians and dentists may be added to the Project at a later date.

The series included in the initial implementation of the Project were placed in the S&E career path (pay plan DR). The success of the Demonstration Project for the S&Es has proven that it is prudent to expand the flexibilities to the AFRL workforce in Business Management and Professional, Technician, and Mission Support occupations. This **Federal Register** notice proposes implementation of three new career paths for the Business Management and Professional (pay plan DO), Technician (pay plan DX), and Mission Support (pay plan DU) occupations. The new career paths are constructed based on career progression and occupational responsibilities, taking into consideration the AFRL workforce, the existing S&E career path and the design of other Defense laboratory broadbanding systems. The career paths along with the occupational series included are listed in Appendix A. Series may be added or deleted as mission work evolves and new competencies are needed.

E. Project Design

For the expansion design, the AFRL Demonstration Project Office recruited volunteers from the 10 AFRL directorates. Most team members were drawn from the career fields being considered for expansion, although some engineers were on the team to assist with understanding the current authorities. The team considered existing AFRL authorities in addition to authorities and design elements of the other DoD Personnel Management Demonstration Project laboratories and other Federal alternative personnel systems.

Although some of the original initiatives addressed recruiting and hiring issues, the Demonstration Project was not able to implement hiring flexibilities with the original publication. Additionally, the RIF changes were denied at the last minute, leaving only a change in how additional service credit was awarded based on the CCS scores. This **Federal Register** adopts hiring authorities currently utilized by other DoD STRL Personnel Demonstration Projects and implements a redesigned RIF methodology, which simplifies and strengthens the process.

III. Personnel System Changes

A. Hiring and Appointment Authorities

1. Description of Hiring Process

At this time, AFRL is implementing a streamlined examining process as demonstrated in other Defense Personnel Management Demonstration Project laboratories. This applies to all positions in AFRL, with the exception of Senior Executive Service (SES), Scientific or Professional (ST), and broadband V positions and any examining process covered by court order. This authority includes the coordination of recruitment and public notices, the administration of the examining process, the certification of candidates, and selection and appointment consistent with merit system principles, to include existing authorities under title 5, U.S.C. and title 5, CFR. The "rule of three" is eliminated, similar to the authorities granted to: (1) Naval Research Laboratory (NRL), 64 FR 33970, June 24, 1999; (2) Naval Sea (NAVSEA) Systems Command Warfare Centers, 62 FR 64049, December 3, 1997; and (3) Communications-Electronics Research, Development, and Engineering Center (CERDEC), 66 FR 54871, October 30, 2001. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking are required only when the number of qualified candidates exceeds 15 or there is a mix of preference and nonpreference applicants. Statutes and regulations covering veterans' preference are observed in the selection process and when rating and ranking are required.

AFRL's Distinguished Scholastic Achievement Appointment Authority (DSAA) uses an alternative examining process which provides the authority to appoint individuals with undergraduate or graduate degrees through the doctoral level to professional positions up to the equivalent of GS–12 in series identified in the S&E career path. This enables AFRL to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements. This flexibility is similar in nature to the authority granted to: (1) The Army Missile Research, Development, and Engineering Center (AMRDEC), 64 FR 12216, March 11, 1999; (2) Army Research Laboratory (ARL), 65 FR 3500, January 21, 2000; (3) Army Engineer Research and Development Center (ERDC), 64 FR 12216, March 11, 1999; and (4) NAVSEA, 62 FR 64064, December 3, 1997.

Candidates may be appointed provided they meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions" and the candidate has a cumulative grade point average of 3.5 (on a 4.0 scale) or better in their field of study (or other equivalent score) or are within the top 10 percent of a university's major school of undergraduate or graduate studies, such as Business School, Law School, *etc.*

2. Qualification Determinations

A candidate's basic eligibility is determined using OPM's "Qualification Standards Handbook for General Schedule Positions." Selective placement factors may be established in accordance with OPM's Qualification Handbook when judged to be critical to successful position contribution. These factors are communicated to all candidates for particular position vacancies and must be met for basic eligibility.

S&E (pay plan DR) and Business Management and Professional (pay plan DO) occupations: The DR and DO pay plans' broadband level I minimum eligibility requirements are consistent with the GS–07 qualifications. Broadband level II minimum eligibility requirements are consistent with the GS–12 qualifications. Broadband levels III and IV are single-grade broadband levels and consistent the minimum qualifications for the respective GS grades of 14 and 15.

Technician (pay plan DX): The DX pay plan broadband level I minimum eligibility requirements are consistent with the GS–01 qualifications. Broadband level II minimum eligibility requirements are consistent with the GS–05 qualifications. Broadband level III minimum eligibility requirements are consistent with the GS–08 qualifications. Broadband IV minimum eligibility requirements are consistent with the GS–11 qualifications.

Mission Support (pay plan DU): The DU pay plan broadband level I minimum eligibility requirements are consistent with the GS–01 qualifications. Broadband level II minimum eligibility requirements are consistent with the GS–05 qualifications. Broadband level III minimum eligibility requirements are consistent with the GS–07 qualifications. Broadband IV minimum eligibility requirements are consistent with the GS–09 qualifications.

3. Appointment Authority

The career-conditional appointment authority is not used under the Demonstration Project. Regular career appointments, temporary appointments, excepted service appointments, and modified term appointments are utilized. The modified term appointment is described below.

4. Modified Term Appointments

The Laboratory conducts many Research and Development (R&D) projects that range from three to six years. The current four-year limitation on term appointments imposes a burden on the Laboratory by forcing the termination of some term employees prior to completion of projects they were hired to support. This disrupts the R&D process and reduces the Laboratory's ability to serve its customers. Under the Demonstration Project, AFRL has the authority to hire individuals under modified term appointments. These appointments are used to fill positions for a period of more than one year but not more than five years when the need for an employee's services is not permanent. The modified term appointment differs from term employment as described in 5 CFR part 316 in that it may be made for a period not to exceed five years, rather than four years. In addition, the AFRL Commander/Executive Director and pay pool managers are authorized to extend a term appointment one additional year. Employees hired under the modified term appointment authority may be eligible for conversion to career appointments. To be converted, the employee must: (1) Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career appointment at a later date; (2) served a minimum of two years of continuous service in the term position; and (3) have a current delta CCS rating greater than -0.3.

5. Extended Probationary Period

A new employee needs time and opportunities to demonstrate adequate contribution for a manager to render a thorough evaluation. The purpose of the extended probationary period or trial period is to allow supervisors an adequate period of time to fully evaluate an S&E employee's contribution and conduct. An extended probationary or trial period of three years applies to all newly hired S&E employees and SCEP students earning a scientific or engineering degree, including individuals entering the Demonstration Project after a break in service of 30 calendar days or more. Employees who enter the Demonstration Project with a

break in service of less than 30 calendar days are not required to complete an extended probationary or trial period if their previous service was in the same line of work as determined by the employee's actual duties and responsibilities upon reappointment.

Employees on non-status appointments will be subject to the trial period required by their appointing authority. Upon conversion from a non-status appointment to a competitive service appointment, employees will be required to serve a three-year probationary period. However, employees serving on a modified term appointment will serve a three-year trial period. Upon conversion to competitive service, the period of employment served on a modified term appointment will be counted toward the completion of the extended probationary period.

Student Career Experience Program (SCEP) students earning a scientific or engineering degree are required to serve the extended probationary period upon non-competitive conversion to career appointment. The requirements in 5 CFR 315.802(c) apply when determining creditable service.

Current permanent Federal employees hired into the Demonstration Project are not required to serve a new probationary or trial period. Any employee appointed prior to the date of this **Federal Register** notice will not be affected. Supervisory probationary periods are made consistent with 5 CFR part 315.

Probationary periods for employees in other career paths remain unchanged.

Aside from extending the time period, all other features of the current probationary or trial period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee when the employee fails to demonstrate proper conduct, competency, and/or adequate contribution during the extended probationary period.

When terminating probationary or trial employees, AFRL provides employees with written notification of the reasons for their separation and provides the effective date of the action.

6. Expanded Temporary Promotions and Details

Under GS rules, details and temporary promotions to higher graded positions cannot exceed 120 days without being made competitively. AFRL may effect details to higher broadband level positions and temporary promotions of not more than one year within a 24-month period without competition, with the ability to extend one additional year, to positions within the Demonstration Project. This is similar to the authority granted to the NRL in 64 FR 33970, June 24, 1999.

B. Pay Setting Outside the CCS

Management has authority to establish appropriate basic pay for employees moving within and into the Demonstration Project through internal and external competitive and non-competitive authorities. The basic pay of newly hired personnel entering the Demonstration Project is set at a level consistent with the expected contribution of the position based on the individual's academic qualifications, competencies, experience, scope and level of difficulty of the position, and/or expected level of contribution. Pay pool managers may establish specific pay setting criteria. Basic pay is limited to that equal to GS–15, step 10. A bonus may be considered in addition to or in lieu of a basic pay increase.

The authorities for retention, recruitment, and relocation incentives granted under 5 CFR part 575 have been delegated to the AFRL Commander/Executive Director and pay pool managers. Eligibility and documentation requirements, as described in 5 CFR part 575, are still in effect.

Recruitment of students is currently limited to the local commuting area because college students frequently cannot afford to relocate to accept job offers within the Laboratory and continue to attend school in a different commuting area. Therefore, AFRL requires the ability to expand recruitment to top universities and incentivize mobility by paying additional expenses to students accepting employment outside of their geographic area. The authority to pay relocation incentives is expanded to allow management to pay a bonus each time the co-operative education student returns to duty to the Laboratory.

1. Local Interns

Outside of the rating cycle, a manager may grant a basic pay increase to an entry-level Business Management and Professional and S&E employee (broadband I) whose contribution justifies accelerated compensation. This is similar to the authority granted to AMRDEC in 62 FR 34876, June 27, 1997.

C. Broadbanding

The use of broadbanding provides a stronger link between pay and contribution to the mission of the Laboratory than what exists in the GS system. It is simpler, less time consuming, and not as costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the Demonstration Project.

In the Demonstration Project, the broadbanding system replaces the GS structure. Initially, only S&E positions in AFRL were covered. This **Federal Register** notice provides the authority to expand coverage of the Demonstration Project to Business Management and Professional, Technician, and Mission Support occupations. ST and SES employees are not covered.

Table 1 shows the four broadband levels in each career path, labeled I, II, III, and IV, with the exception of newly expanded broadband V for the S&E career path. The broadband levels are designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates within the appropriate broadband level(s). The S&E career path broadband level I includes the current GS–07 through GS–11; level II, GS–12 and GS/GM–13; level III, GS/GM–14; level IV, GS/GM–15; and level V, above GS/GM–15. The Business Management and Professional career path broadband level I includes the current GS–07 through GS–11; level II, GS–12 and GS/GM–13; level III, GS/GM–14; and level IV, GS/GM–15. The Mission Support career path broadband level I includes the current GS–01 through GS–04; level II, GS–05 and GS–06; level III, GS–07 and GS–08; and level IV, GS–09 and 10. The Technician career path broadband level I includes the current GS–01 through GS–04; level II, GS–05 through GS–07; level III, GS–08 through GS–10; and level IV, GS–11 and 12. Comparison to the GS grades was useful in setting the upper and lower dollar limits of the broadband; however, once employees are moved into the Demonstration Project, GS grades and steps no longer apply.

TABLE 1. BROADBANDING STRUCTURE

Career Paths	Corresponding GS Grades															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
	Band Structure															
Scientists & Eng.							DR-I					DR-II		DR-III	DR-IV	DR-V
Business Mgt./Prof.							DO-I					DO-II		DO-III	DO-IV	
Mission Support	DU-I				DU-II		DU-III		DU-IV							
Technician	DX-I				DX-II			DX-III			DX-IV					

The broadbanding plan for the S&E occupational family is being expanded to include a broadband V to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This broadband is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of their technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as ST positions because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as SES positions because of their requirement for advanced specialized scientific or engineering expertise and because the positions are not at the level of general managerial authority and impact required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness and continued applicability to the current STRL scientific, engineering, and technology workforce needs. The degree to which AFRL plans to participate in this concept and develop classification, compensation and performance management policy, guidance, and implementation processes will be based on the final outcome of this evaluation. Additional guidance will be included in internal AFRL issuances.

D. Classification

1. Occupational Series

The OPM occupational series scheme, which frequently provides well-recognized disciplines with which employees wish to be identified, is maintained and facilitates movement of personnel into and out of the Demonstration Project. Other series may be added to the Project as the need for new competencies emerges within the Laboratory environment.

2. Classification Factors and Descriptors

The present system of OPM classification standards is used for the identification of proper series and occupational titles of positions within the Demonstration Project. OPM grading criteria are not used as part of the Demonstration Project. Rather, the appropriate career path broadband level factor descriptors are used to determine the broadband level. These same factor descriptors are used for the annual CCS employee assessments. For classification, only broadband level I descriptors are applied for each of the factors for a broadband level I position, for example. Therefore, the factors are sorted first by level and then by factor. (The broadband level of the position is reviewed and appropriately adjusted based on a yearly assessment of the employee's level of contribution to the organization in relation to these same factor descriptors, the position's duties, and the corresponding CCS score.) Specific broadband level factor descriptors for each career path are outlined in Appendix B and may be changed in future internal AFRL issuances, as needed.

3. Classification Authority

The AFRL Laboratory Commander has delegated classification authority. This authority is delegated to the technology directors or pay pool managers, who may further delegate to not lower than one management level above the first-level supervisor of the position under review. The first-level supervisor provides classification recommendations. Personnel specialists provide on-going consultation and guidance to managers and supervisors throughout the classification process.

4. Statement of Duties and Experience

Under the Demonstration Project's classification system, the automated Statement of Duties and Experience (SDE) replaces the AF Form 1378, Civilian Personnel Position Description. The SDE includes a description of position-specific information; references the broadband level factor descriptors for the assigned broadband level and career path; and provides data element information pertinent to the position. Laboratory supervisors follow a computer assisted process to produce the SDE.

5. Skill Codes

The AF presently uses skill code sets within the Defense Civilian Personnel Data System (DCPDS) as a means to reflect duties of current positions and employees' competencies and previous experiences. Each code represents a specialization within the occupation. Specializations are those described in classification or qualification standards and those agreed upon by functional managers and personnel specialists to be important to staffing patterns and career paths. These codes may be used to refer candidates for employment with the AF; for placement of current employees into other positions; and for training consideration under competitive procedures. To facilitate the movement of personnel into, out of, and within the Demonstration Project, the AF system of skills coding continues to be used, as long as it is required by the AF. Laboratory supervisors select appropriate skill code sets to describe the work of each employee through the automated SDE classification process, as described below.

6. Classification Process

The SDE is accomplished utilizing an automated system:

(a) The supervisor identifies the organizational location, SDE number, and the employee's name. The supervisor selects the appropriate occupational series, pay plan, broadband level, and title; the level factor descriptors corresponding to the broadband level that is most commensurate with the level of contribution necessary to accomplish the duties and responsibilities of the position; the CCS job category (if applicable); the functional classification code; and the DCPDS supervisory level.

The Demonstration Project initiatives include a dual track career progression. The dual track provides the option for Demonstration Project employees to pursue either the management track or the technical/functional track. CCS is structured to allow an individual to advance within his/her career by increasing his/her contributions to the

organization and is not dependent upon which track an employee pursues. The Demonstration Project system is not hierarchical, meaning a supervisor's grade is based on the contributions he/she has made to the organization, and not based on the grades of subordinate employees, as is typical under other personnel systems. Therefore, supervisors may supervise employees at the same or higher broadband level. For Business Management and Professional and S&E positions, prefixes may be added to the titles to identify the associated broadband level (*i.e.,* Associate, Senior, and Principal). The supervisor then completes a standard statement relating to the level of certification and functional area for the Acquisition Professional Development Program (APDP) if applicable.

(b) The supervisor creates a brief description of position-specific information by typing free-form at the appropriate point. The supervisor chooses statements pertaining to physical requirements; competencies required to perform the work; and special licenses or certifications needed (other than APDP). Based on the supervisory level of the position, the system produces mandatory statements pertaining to affirmative employment, safety, and security programs.

(c) The supervisor selects up to three AF skill code sets (as long as used within the AF) appropriate to the position, in addition to other position data, such as position sensitivity, Fair Labor Standards Act (FLSA) status, drug testing requirements, *etc.* These data elements are maintained as a separate page of the SDE (*i.e.,* an addendum) as this information can change frequently. By maintaining this information as an addendum, the need to create and classify a new SDE each time one of these elements must be updated is eliminated.

(d) The supervisor accomplishes the SDE with a recommended classification, then signs and dates the document. The SDE is sent to the individual in the organization with delegated classification authority for approval and classification, which is documented by that person signing and dating the SDE.

The computer assisted system incorporates definitions for the CCS job categories (if applicable), supervisory levels, occupational series as well as their corresponding skill code sets (if applicable), and the functional classification codes as appropriate. The FLSA status selection must be in accordance with OPM guidance. Management analysts and personnel specialists may advise Laboratory management as necessary.

E. Contribution-based Compensation System (CCS)

1. Overview

The purpose of the Contribution-based Compensation System is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the Laboratory workforce. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. CCS allows for more employee involvement in the assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution, facilitates employee career progression, provides an understandable basis for basic pay changes, and delinks awards from the annual assessment process. (Funds previously allocated for performance-based awards are reserved for distribution under a separate Laboratory awards program.) The CCS process described herein applies to broadband levels I through IV. The assessment process for broadband V positions will be documented in AFRL implementing issuances.

CCS is a contribution-based assessment system that goes beyond a performance-based rating system. That is, it measures the employee's contribution to the organization's mission, the contribution level, and how well the employee performed a job. Contribution is simply defined as the measure of the demonstrated value of what an employee did in terms of accomplishing or advancing the organizational objectives and mission impact. CCS promotes proactive basic pay adjustment decisions on the basis of an individual's overall contribution to the organization.

The same factor descriptors are used for classification and for the annual CCS employee assessments. For the CCS assessment process, the descriptors are sorted first by factor and then by level as shown in Appendix C. The appropriate career path factor descriptors (as shown in Appendix C) are used by the rating official to determine the employee's actual contribution score. Each factor has four levels of increasing contribution corresponding to the four broadband levels. Employees can score within, above, or below their broadband level, for example, a broadband level II employee could score in the broadband level I, III, or IV range. Therefore, for the CCS process, descriptors for all four levels of the career path factors are presented to better assist the supervisor with the employee assessment.

The annual CCS assessment scoring process (section III, E.3.) begins with employee input, which provides an opportunity to state the perceived accomplishments and level of contribution. Scores have a direct relationship with basic pay; therefore, the significance of an employee's actual score is not known until it is compared to his/her expected score. An employee's basic pay determines an expected score when plotted on the appropriate career path Standard Pay Line (SPL) (section III, E.2.). For instance, a Mission Support employee with a basic pay of $30,117 in 2009 would have an expected score of 2.25, while a Business Management and Professional employee with a basic pay of $69,738 would have the same expected score. The comparison between expected score and actual score provides an indication of equitable compensation, undercompensation, or overcompensation. (Typically, employees who are overcompensated are not meeting contribution expectations and may be placed on a Contribution Improvement Plan (CIP), which is described in further detail in section III, F.) Broadband levels in each career path have the same expected score range, as depicted in Table 2 below which also includes the basic pay ranges for each broadband level. As the general basic pay rates increase annually, the minimum and maximum basic pay rates of broadband levels I through IV for each career path are adjusted accordingly. Individual employees receive basic pay increases based on their assessments under the Contribution-based Compensation System. There are no changes to title 5, U.S.C., regarding locality pay under the Demonstration Project.

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TABLE 2. BROADBAND SCORE AND 2009 BASIC PAY RANGES BY CAREER PATH

DR Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0 75	2 25	$36,322	$69,739
2	1.75	3 25	$58,600	$92,017
3	2 75	4 25	$80,878	$114,295
4	3 75	5.25	$103,156	$136,573*

*Basic salary is limited to GS-15, step 10 (any amount greater is paid in the form of a bonus).

DO Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0.75	2.25	$36,322	$69,739
2	1 75	3.25	$58,600	$92,017
3	2 75	4.25	$80,878	$114,295
4	3.75	5.25	$103,156	$136,573*

*Basic salary is limited to GS-15, step 10 (any amount greater is paid in the form of a bonus).

DX Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0.75	2.25	$13,664	$36,923
2	1.75	3.25	$29,170	$52,429
3	2.75	4 25	$44,676	$67,935
4	3.75	5.25	$60,182	$83,441

DU Broadband Score and 2009 Basic Pay Ranges				
Broadband Level	CCS Score Lower	CCS Score Higher	Min Basic Pay	Max Basic Pay
1	0.75	2.25	$14,871	$30,888
2	1.75	3.25	$25,549	$41,566
3	2.75	4.25	$36,227	$52,244
4	3.75	5.25	$46,905	$62,922

2. Standard Pay Line (SPL)

A mathematical relationship between assessed contribution and basic pay compensation was defined in order to create the SPLs for each career path used in CCS. Initially, various mathematical relationships between each CCS score and the appropriate corresponding basic pay rate were examined and analyzed given the following systemic constraints. First, CCS necessitates that the relationship be described by a single equation that yields a reasonable correlation between basic pay rates in the broadband levels and those of the corresponding GS grade(s). Second, neither the equation nor its derivative(s) can exhibit singularities within or between levels. That is, the equation must be continuous, smooth, and well-defined across the broadband levels within each career path. Third, the relationship may not yield disincentives or inequities between employees or groups of employees; it must demonstrate equitable *(i.e.,* consistent) growth at each CCS score. Mathematical analysis demonstrated that the most reasonable relationship is a straight line—"the SPL."

Derivation of the initial S&E career path SPL was based on distributing the GS grades and steps of the incoming population across the corresponding broadband levels and plotting these against the GS basic pay rates. Although the data are not continuous, there is a linear trend. Each of these data points was weighted by the actual calendar year 1995 (CY95) population data for the Demonstration Laboratory. Using a "least squares error fit" analysis, the best straight line fit to this weighted data was computed.

Specifically, the equation of the original S&E SPL for CY95 was: BASIC PAY = $13,572 + ($15,415 × CCS SCORE). The SPL for CY96 was calculated from the SPL for CY95 plus the general pay increase ("G") given to GS employees in January 1996. The equation for the CY96 SPL was: BASIC PAY = $13,843 + ($15,723 × CCS SCORE). The CY97 SPL was the CY96 SPL increased by the "G" for CY97.

Currently, the equation for the 2009 S&E SPL is BASIC PAY = $19,613 + ($22,278 × CCS SCORE). Figure 1 provides a pictorial representation of the DR 2009 SPL. Since the Business Management and Professional career path has the same banding structure as

the existing S&E career path, the same SPL equation is used for that career path as shown in Figure 2.

FIGURE 1. CCS RELATIONSHIP - S&E CAREER PATH

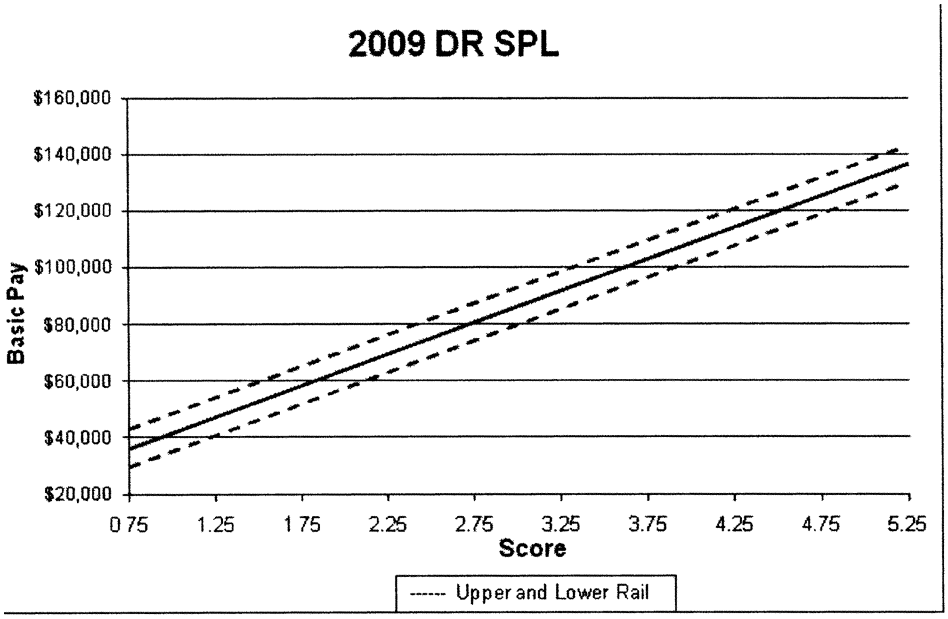
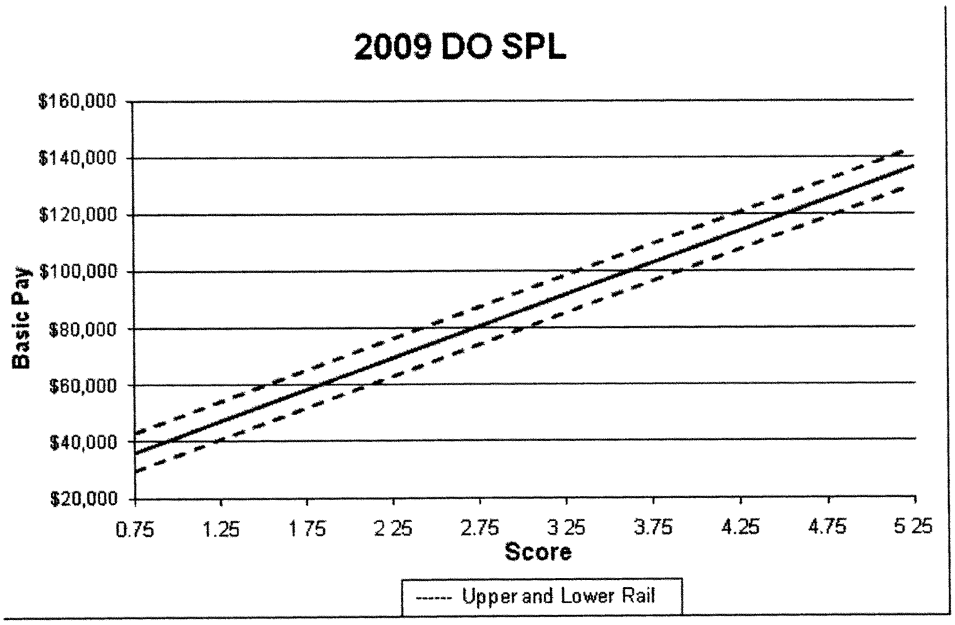


FIGURE 2. CCS RELATIONSHIP - BUSINESS MANAGEMENT AND PROFESSIONAL CAREER PATH



For the other two career paths, Technician and Mission Support, a different approach was used to design the SPL. In order to encompass all employees across the career path, a straight-line slope-intercept equation was utilized. A CCS score of 1.0 was set as equivalent to the basic pay of a step one of the lowest GS grade in the career path, while a CCS score of 4.9 is equivalent to the basic pay of step ten of the highest GS grade. A straight line was then drawn between these two points, creating the SPL. Consequently, the 2009 Mission Support SPL is BASIC PAY = $6,862 + ($10,678 × CCS SCORE) and the 2009 Technician SPL is BASIC

PAY = $2,034 + ($15,506 × CCS SCORE)
as shown in Figures 3 and 4.

FIGURE 3. CCS RELATIONSHIP - MISSION SUPPORT CAREER PATH

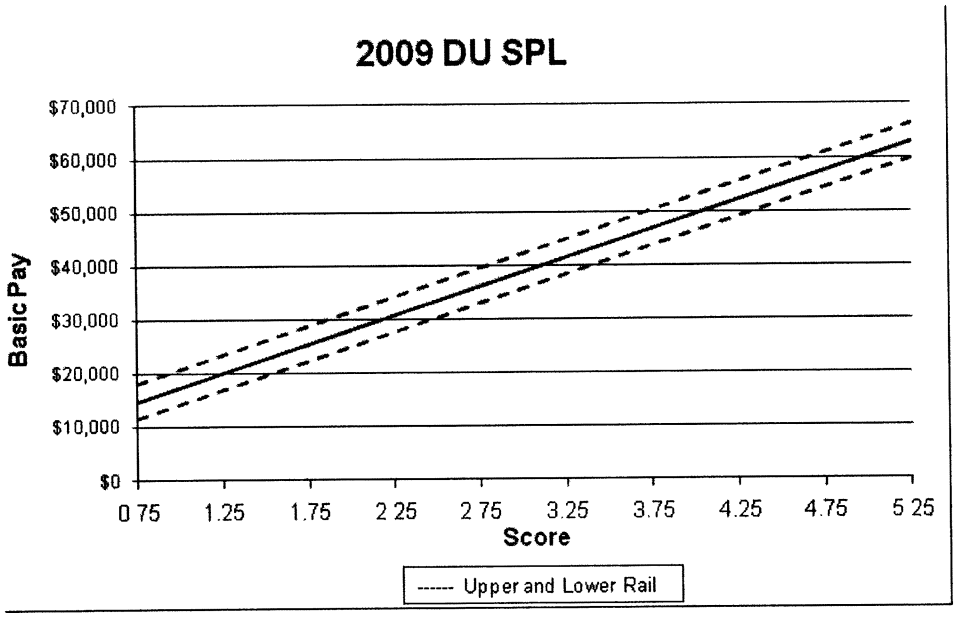
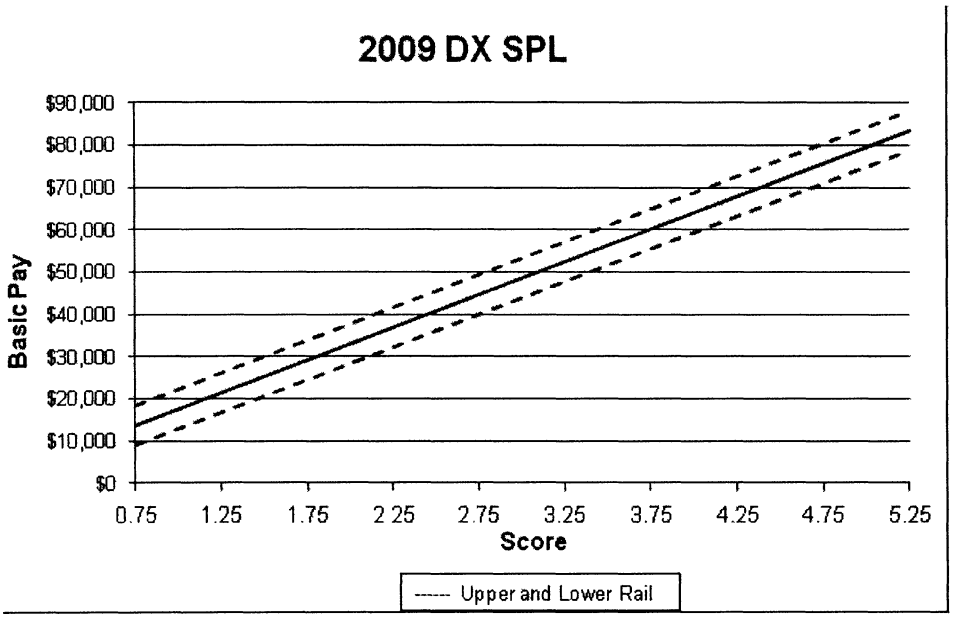


FIGURE 4. CCS RELATIONSHIP - TECHNICIAN CAREER PATH



For each of the career paths, the lines were extended to 0.75 and 5.25, in order to provide a broader range of basic pay rates (*i.e.,* an overall score of 0.75 corresponds with the minimum basic pay of the career path and an overall score of 5.25 corresponds with the maximum basic pay of the career path). Rails were then constructed at + and— 0.3 CCS around the SPL for all career paths. The area encompassed by the rails denotes the acceptable contribution and compensation relationship.

Each SPL, and therefore, the basic pay rates, are increased by the amount of the general basic pay increase authorized each year. Continuing this calculation of the SPL maintains the same relationships between the basic GS pay scale and the SPL in the Demonstration Project. Locality pay is not included in the SPLs. Locality pay is added to the basic pay rate based upon each employee's official duty station.

3. The CCS Assessment Process

The rating official is the first-level supervisor of record for at least 90 days during the rating cycle. If the current immediate supervisor has been in place for less than 90 days during the rating cycle, the second-level supervisor serves as the initial rating official. If the second-level supervisor is in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain conducts the assessment.

The annual assessment cycle begins on October 1 and ends on September 30 of the following year. At the beginning of the annual assessment period, the broadband level factor descriptors are provided to employees so that they know the basis on which their contribution is assessed.

A midyear review, in the March to April timeframe, is conducted for employees. At this time, the employee's professional qualities, competences, developmental needs, and mission contribution are discussed, as is future development and career opportunities. Additionally, supervisors are provided feedback on their supervisory qualities and skills. To highlight its importance, all feedback sessions are certified as completed by the rating official conducting the feedback session. While one documented formal midyear feedback is required, supervisors can/should conduct informal feedback sessions throughout the rating period. The preferable method for all feedback sessions is face-to-face. (Dealing with inadequate employee contribution is addressed in section III, F.)

At the end of the annual assessment period, employees summarize their contributions in each factor for their rating official. Employee written self-assessments are highly encouraged to ensure that all contributions accomplished during the rating cycle are identified to management for consideration. The rating official determines preliminary CCS scores using the employee's input and the rating official's assessment of the overall contribution to the Laboratory mission based on the appropriate broadband level factor descriptors. For each factor, the rating official places the employee's contribution at a particular broadband level (I, II, III, or IV) and general range (*i.e.,* high, medium, or low) to arrive at the preliminary score. (Inadequate employee contribution is addressed in section III, F.)

The rating officials (*e.g.,* branch chiefs) and their next level supervisor (*e.g.,* the respective division chief) then meet as a group (*e.g.,* first-level Meeting of Managers (MoM)) to review and discuss all proposed employee assessments and preliminary CCS scores. Giving authority to the group of managers to determine scores ensures that contributions are assessed and measured similarly for all employees. During the MoMs, the preliminary factor scores are further refined into decimal scores. For example, if the contribution level for a factor is at the lowest level of level I, a factor score of 1.0 is assigned. Higher levels of contribution are assigned factor scores increasing in 0.1 increments up to 4.9. A factor score of 0.0 can be assigned if the employee does not demonstrate a minimum level I contribution. Likewise, a factor score of 5.9 can be assigned if the employee demonstrates a contribution that exceeds the broadband level IV descriptor. Rating officials must document justification for each proposed factor score.

Factor scores are then averaged to give an overall CCS score. Each broadband range is defined for overall CCS scores from 0.75 to 5.25 as shown in Table 2. The maximum overall CCS score for broadband level IV is set at 5.25, to be consistent with the maximum overall CCS scores for other broadband levels (4.25 for broadband level III, 3.25 for broadband level II, and 2.25 for broadband level I). Therefore, when the average of CCS factor scores exceeds 5.25, the overall CCS score is set to 5.25 with the individual identified to upper management as having exceeded the maximum contribution defined by the broadband. The maximum compensation for each broadband is the basic pay corresponding with an n.25 overall CCS score (*i.e.,* 2.25, 3.25, 4.25, and 5.25).

Once the scores have been finalized, the pay pool manager approves the scores for the entire pay pool. Pay pool managers have the ability to look across the entire pay pool and may address anomalies through the appropriate management chain. However, CCS scores cannot be changed by managerial levels above the original group of supervisors that participated in the respective lowest level MoM. Contribution feedback and any training and/or career development needs are then discussed with the individual employees.

If, on October 1, the employee has served under CCS for less than 90 days, the rating official waits for the subsequent annual cycle to assess the employee. The employee is considered "presumptive due to time" and is assigned a score at the intersection of their basic pay and the SPL. Periods of approved, paid leave are counted toward the 90-day time period.

When an employee cannot be evaluated readily by the normal CCS assessment process due to special circumstances that take the individual away from normal duties or duty station (*e.g.,* long-term full-time training, reserve military deployments, extended sick leave, leave without pay, etc.), the rating official documents the rating as "presumptive due to circumstance" in the CCS software. The rating official then assesses the employee using one of the following options:

(a) Recertify the employee's last contribution assessment; or

(b) assign a score at the intersection of the employee's basic pay and the SPL.

Basic pay adjustments, *i.e.,* decisions to give or withhold basic pay increases, are based on the relationship between the employee's actual CCS contribution score and the employee's current basic pay (as discussed in section III, E.5). Decisions for broadband movement (section III, E.6.) are also based on this relationship. Final pay determinations and broadband level changes are made by the pay pool manager.

4. Pay Pools

Pay pool structure is under the authority of the Laboratory Commander/Executive Director, with each pay pool manager at the SES or full colonel level. The following minimal guidelines apply: (a) A pay pool is typically based on the organizational structure/functional specialty and should include a range of basic pay rates and contribution levels; (b) a pay pool must be large enough to constitute a reasonable statistical sample, *i.e.,* 35 or more employees; (c) a pay pool must be large enough to encompass a second level of supervision since the CCS process uses a group of supervisors in the pay pool to determine assessments and recommend basic pay adjustments; (d) the pay pool manager holds yearly pay adjustment authority; and (e) neither the pay pool manager nor supervisors within the pay pool recommend or set their own individual pay.

The amount of money available for basic pay increases within a pay pool is determined by the general increase ("G") and an incentive amount ("I") drawn from money that would have been available for step increases and career ladder promotions, previously utilized under the General Schedule. The incentive amount is set by the AFRL Corporate Board and is considered adjustable to ensure cost discipline over the life of the Demonstration Project. The dollars derived from "G" and "I"

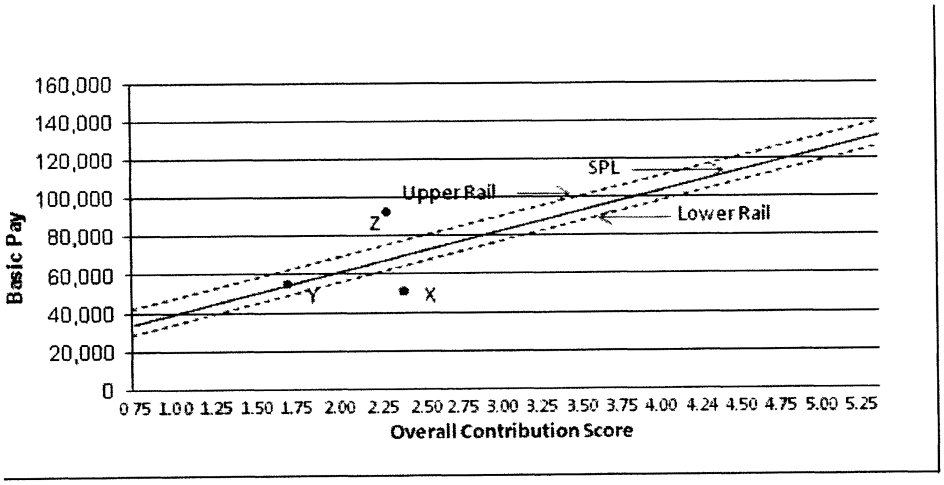
included in the pay pool are computed based on the basic pay of eligible employees in the pay pool as of September 30 of each year. Pay pool dollars are not transferable between pay pools.

5. Basic Pay Adjustment Guidelines

The maximum compensation is limited to GS–15, step 10, basic pay. Any employee who's basic pay would exceed a GS–15, step 10, based on his or her overall CCS score, will be identified to upper management as having exceeded the maximum allowable compensation and will be paid a bonus to cover any difference between the GS–15, step 10, basic pay and the basic pay associated with his or her overall CCS score. Locality pay is added based upon each Demonstration Project employee's official duty station.

Employees' annual contributions are determined by the CCS process described in section E.3. Their CCS scores are then plotted on the appropriate SPL graph based on their current basic pay as shown in Figure 5. The position of those points in relation to the SPL provides a relative measure (Delta Y) of the degree of overcompensation or undercompensation for each employee. This permits all employees within a pay pool to be rank-ordered by ΔY, from the most undercompensated employee to the most overcompensated.

FIGURE 5. EMPLOYEE POSITIONING



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In general, those employees who fall below the SPL (indicating undercompensation, for example, employee X in Figure 5) should expect to receive greater basic pay increases than those who fall above the line (indicating overcompensation, for example, employee Z). A CCS assessment that falls on either rail is considered to be within the rails. Over time, employees will migrate closer to the standard pay line. The following provides more specific guidelines: (a) Those who fall above the upper rail (for example, employee Z) are given an increase ranging from zero to a maximum of "G;" (b) those who fall within the rails (for example, employee Y) are given a minimum of "G;" and (c) those who fall below the lower rail (for example, employee X) are given at least their basic pay times "G" and "I." If the pay increase results in a broadband movement for employees who do not meet APDP requirements that portion of the increase that takes them beyond the top of the broadband is withheld. The pay pool manager may give a bonus to an employee as compensation, in whole or part, to cover any difference between the employee's current basic pay and the basic pay associated with their new overall CCS score. This may be appropriate in a situation when the employee's continued contribution at this level is uncertain. Bonus criteria will be documented in AFRL implementing issuances.

Each pay pool manager sets the necessary guidelines for the gradation of pay adjustments in the pay pool within these general rules: (1) Final decisions are standard and consistent within the pay pool; (2) are fair and equitable to all stakeholders; (3) maintain cost discipline over the Project life; and (4) be subject to review.

6. Broadband Level Movements

Under the Demonstration Project, non-competitive broadband movement may occur once a year during the CCS process, if certain conditions are met. A key concept of the Demonstration Project is that career growth may be accomplished by movement through the broadband levels by significantly increasing levels of employee contribution toward the AFRL mission. An employee's contribution is a reflection of his/her CCS score, which is derived from the factor descriptors. Because the factor descriptors are written at progressively higher levels of work and are the same factor descriptors used in the classification process, higher scores reflect that the employee's contribution is equivalent to the level associated with the score he/she is awarded. The broadband level of a position may be increased when an employee consistently contributes at the higher broadband level through increased expertise and by performing expanded duties and responsibilities commensurate with the higher broadband level factor descriptors. If an employee's contributions impact and broaden the scope, nature, intent and expectations of the position and are reflective of higher level factor descriptors, the classification of the position is updated accordingly. This form of movement through broadband levels is referred to as a seamless broadband movement and can only happen within the same career path; employees cannot cross over career paths through this process. The criteria is similar to that used in an accretion of duties scenario and must be met for an

employee to move seamlessly to the higher broadband level and for this movement to occur, that is: (1) The employee's current position is absorbed into the reclassified position, with the employee continuing to perform the same basic duties and responsibilities (although at the higher level); and (2) the employee's current position is reclassified to a higher broadband level as a result of additional higher level duties and responsibilities. No additional broadband movement is guaranteed since there are no positions targeted to a higher broadband level within this system. It may take a number of years for contribution levels to increase to the extent a broadband level move is warranted, and not all employees achieve the increased contribution levels required for such moves.

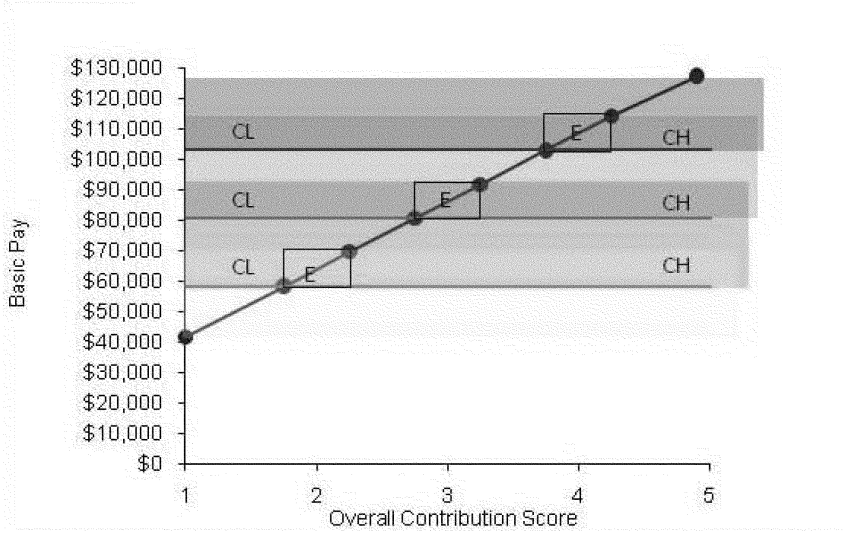
The simplified classification and broadbanding structure allows management to assign duties consistent with the broadband level of a position without the necessity to process a personnel action and provides managers authority to move employees between positions within their current broadband level, at any time during the year. However, management also has the option to fill vacancies throughout the year using various staffing avenues, to include details, reassignments, or competitive selection procedures (as applicable and/or required) for competitive promotions or temporary promotions (typically used for filling supervisory positions). Employees may be considered for vacancies at higher broadband level positions consistent with the Demonstration Project competitive selection procedures.

Any resulting changes in broadband levels that occur through the CCS process are not accompanied by pay increases normally associated with formal promotion actions, but rather, they are processed and documented with a pay adjustment action to include appropriate changes/remarks (*e.g.,* change in title (if appropriate), change in broadband level, and accomplishment of a new SDE (section III, D.6.). The terms "promotion" and "demotion" are not used in connection with the CCS process.

The banding structure creates an overlap between adjacent broadband levels which facilitates broadband movement. Specifically, the basic pay overlap between two levels is defined by the basic pay rates at—to + 0.25 CCS around two whole number scores. For instance, the minimum basic pay for a broadband level I is that basic pay from the SPL corresponding to a CCS score of 0.75. And the maximum basic pay for broadband level I is that basic pay from the SPL corresponding to a CCS score of 2.25. The minimum basic pay for a broadband level II is that basic pay from the SPL corresponding to a CCS score of 1.75. And the maximum basic pay for broadband level II is that basic pay from the SPL corresponding to a CCS score of 3.25. Likewise, the minimum basic pay for level III would be the basic pay from the SPL corresponding to a CCS score of 2.75 and so on for the different broadband levels. This definition provides a basic pay overlap between broadband levels that is consistent with and similar to basic pay overlaps in the GS schedule.

Figure 6 shows the basic pay overlap areas between broadband contribution levels. These basic pay overlap areas are divided into three zones designated as CL (consideration for change to lower level), CH (consideration for change to higher level), and E (eligible for change to higher or lower level). All the E zones have the same width, 0.5 CCS, and height. The E zone is described as the box formed by the intersection of the integer + and − 0.25 CCS lines and the SPL.

FIGURE 6. OVERLAP AREAS (EXAMPLE OF S&E AND BUSINESS MANAGEMENT AND PROFESSIONAL SPLs)



The E zones serve to stabilize the movement between adjacent broadband levels. This allows for annual fluctuations in contribution scores for people near the top or bottom of a level, without creating the need for repeated broadband level changes. An employee whose contribution score falls within an E zone is eligible for a change in broadband level but one should not be given unless the supervisor has a compelling reason to request the change to increase or reduce the employee's level.

Those who consistently achieve increased contribution assessments progress through their broadband level and find their basic pay climbing into

the corresponding CH zone. Once the employee's CCS score is demonstrated to be consistently within the CH zone, a pay pool determination should be made as to whether the criteria for movement to a higher broadband level is justified unless the supervisor has a compelling reason not to request the change (*e.g.,* temporary assignment; not a continuing assignment; unique circumstances for specific rating period, *etc.*). Conversely, regression through the broadband levels works the same way in the opposite direction. Those who consistently receive decreasing contribution assessments regress through their broadband level and do not receive any basic pay adjustments greater than "G." They will find that the CL zone at the bottom of their current broadband level eventually aligns with their current basic pay. If the employee's CCS score is demonstrated to be consistently within the CL zone, a pay pool determination should be made as to whether the employee should be moved to the lower broadband level unless the supervisor has a compelling reason not to request the change (*e.g.,* temporary assignment; not a continuing assignment; unique circumstances for specific rating period; *etc.*). If an employee moves completely above the CH zone or below the CL zone, the employee is considered to be in the mandatory zone and is automatically moved in broadband level, as long as APDP requirements are met (if applicable). If APDP requirements are not met, that portion of the basic pay increase that takes them beyond the top of the broadband is withheld.

7. Voluntary Pay Reduction and Pay Raise Declination

Under CCS, an employee may voluntarily request a pay reduction or a voluntary declination of a pay raise which would effectively place an overcompensated employee's pay closer to or below the SPL. Since an objective of CCS is to properly compensate employees for their contribution, the granting of such requests is consistent with this goal. Under normal circumstances, all employees should be encouraged to advance their careers through increasing contribution rather than being undercompensated at a fixed level of contribution.

To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout or a CCS grievance decision and document the reasons for the request. Management must properly document all decisions to approve or disapprove such requests. This type of basic pay change is not considered to be an adverse personnel action.

8. CCS Grievance Procedures

An employee may grieve the assessment received under CCS, using the administrative grievance system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure which does not permit grievances over performance ratings, must file assessment grievances under administrative grievance procedures. Bargaining unit employees, whose negotiated grievance procedures cover performance rating grievances, must file assessment grievances under those negotiated procedures. Additional CCS grievance information to include the possible use of Alternative Dispute Resolution is documented in AFRL implementing issuances.

F. Dealing With Inadequate Contribution

CCS is a contribution-based assessment system that goes beyond a performance-based rating system. Contribution is measured against factors, each having four levels of increasing contribution corresponding to the four broadband levels. Employees are plotted against the SPL based on their score and current basic pay, which determines the amount of overcompensation or undercompensation. When an employee's contribution plots in the area above the upper rail of the SPL (section III, E.3.), the employee is overcompensated for his/her level of contribution and is considered to be in the Automatic Attention Zone (AAZ).

This section addresses reduction in pay or removal of Demonstration Project employees based solely on inadequate contribution, as determined by the amount of overcompensation. The following procedures are similar to and replace those established in 5 CFR part 432 pertaining to performance-based reduction in grade and removal actions. Adverse action procedures under 5 CFR part 752 remain unchanged.

The immediate supervisor has two options when an employee plots in the AAZ. The first option is to write a memorandum for record documenting the employee's inadequate contributions. The supervisor states in writing the specifics on where the employee failed to contribute at an adequate level and provide rationale for not taking a formal action. Examples where this might be used is when an employee's contribution plots just above the upper rail of the SPL or extenuating circumstances exist that may have contributed to the employee's overall score and are expected to be temporary in nature. A copy of this memorandum is provided to the employee and to higher levels of management. The second option is to take formal action by placing the employee on a Contribution Improvement Plan (CIP), providing the employee an opportunity to improve. The CIP must inform the employee, in writing, that unless the contribution increases and is sustained at a higher level, the employee may be reduced in pay or removed.

The supervisor will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate increased contribution commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate increased contribution, management will offer appropriate assistance to the employee.

Once an employee has been afforded a reasonable opportunity to demonstrate increased contribution, but fails to do so, management has sole and exclusive discretion to initiate reduction in pay or removal. If the employee's contribution increases to a higher level and is again determined to deteriorate in any area within two years from the beginning of the opportunity period, management has sole and exclusive discretion to initiate reduction in pay or removal with no additional opportunity to improve. If an employee has contributed appropriately for two years from the beginning of an opportunity period and the employee's overall contribution once again declines, management will afford the employee an additional opportunity to demonstrate increased contribution before determining whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to at least a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on whom the action is based. Management may extend this advance notice for a period not to exceed an additional 30 days. Management will afford the employee a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce pay or remove an employee for inadequate contribution may only be based on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the notice of proposed action.

Management will issue written notice of its decision to the employee at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights as specified in 5 CFR 432.106.

Management will preserve all relevant documentation concerning a reduction in pay or removal which is based on inadequate contribution and make it available for review by the affected employee or designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary thereof when the employee makes an oral reply; and the written notice of decision and the reasons therefore, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate increased contribution.

When a reduction in pay or removal action is not taken because of contribution improvement by the employee during the notice period and the employee's contribution continues to be deemed adequate for two years from the date of the advanced written notice, any entry or other notation of the proposed action will be removed from management records relating to the employee, in accordance with applicable directives.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCS assessment process may reconvene any time during the year to review an employee whose contribution is not appropriate for his or her basic pay and decide if the employee should be placed on a CIP.

G. Voluntary Emeritus Corps

Under the Demonstration Project, the AFRL Laboratory Commander/Executive Director and pay pool managers have the authority to offer retired or separated S&E, Business Management and Professional, Mission Support, and Technical employees voluntary assignments in the Laboratory. The Voluntary Emeritus Corps ensures continued quality research, mentoring, support, and program management while reducing the overall basic pay line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the laboratory community. The program is beneficial during manpower reductions as senior personnel accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. (This authority is similar in nature to that utilized by S&Es in AFRL and described in the CERDEC demonstration project plan, 66 FR 54871, October 30, 2001.)

This authority includes employees who have retired or separated from Federal service. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of on-the-job injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service.

To be accepted into the Emeritus Corps, a volunteer must be recommended by a manager within the Laboratory. Everyone who applies is not automatically entitled to a voluntary assignment. The Laboratory Commander/Executive Director and/or pay pool manager must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained according to applicable records management requirements.

To encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity.

Volunteers are not permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists.

An agreement is established between the volunteer, the pay pool manager, and the servicing Civilian Personnel Office. The agreement is reviewed by the local Staff Judge Advocate representative responsible for ethics determinations under the DoD Joint Ethics Regulation, DoD Directive 5500.7–R. Volunteers are not permitted to report for duty prior to finalization of the agreement, which will include, as a minimum:

(a) A statement that the voluntary assignment does not constitute an appointment in the Civil Service and is without compensation;

(b) the volunteer waives any and all claims against the Government because of the voluntary assignment except for purposes of on-the-job injury compensation as provided in 5 U.S.C. 8101(1)(B);

(c) volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the Laboratory (travel, administrative, office space, supplies);

(f) a one page SDE;

(g) a provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Corps;

(h) a provision allowing either party to void the agreement with ten working days written notice; and

(i) the level of security access required (any security clearance required by the assignment is managed by the Laboratory while the volunteer is a member of the Emeritus Corps).

H. Reduction-in-Force (RIF) Procedures

The competitive area may be determined by career paths (pay plans), lines of business, product lines, organizational units, funding lines, occupational series, functional area, technology directorate, and/or geographical location, or a combination of these elements, and must include all Demonstration Project employees within the defined competitive area. The RIF system has a single round of competition to replace the current two-round process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing.

Retention standing is based on tenure, veterans' preference, overall CCS score, and length of service. There is no augmented service credit based on contribution scores (*i.e.,* there are no additional years of service added to service computation dates based on contribution scores). Probationary and trial period employees are in tenure group I for RIF purposes.

Displacement is limited to one broadband level below the employee's present level within the career path. Broadband level I employees can displace within their current broadband level. A preference eligible employee with a compensable service connected disability of 30 percent or more may displace up to two broadband levels below the employee's present level within the career path. A broadband level I preference eligible employee (with a compensable service connected disability of 30 percent or more) can displace within their current broadband. Employees bumped to lower broadband levels maintain their existing basic pay for the remainder of the current CCS cycle. Any future basic pay increases are dependent upon CCS assessments.

An employee whose current overall CCS scores places him/her in the area above the upper rail, may only displace an employee in the same zone during that same period. The same "undue disruption" standard currently utilized serves as the criteria to determine if an employee is fully qualified. The displaced individual may similarly displace another employee. If/When there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated.

After completion of the first rating cycle, employees are provided credit for contribution based on their actual OCS. After completion of the second rating cycle, employees are provided contribution credit based on the average of their last two contribution scores. After completion of the third rating cycle, employees are provided contribution credit based on the average of their last three contribution scores. The expected CCS score is used for employees who have not yet received a CCS assessment.

IV. Training

An extensive training program is currently in place for participants in the Demonstration Project. Supervisory training is required for all new supervisors of Demonstration Project employees, to include comprehensive CCS training, providing effective CCS feedback training, and CCS software training. Additional training is planned for and will be made available to support personnel and every employee who converts into the Demonstration Project. Training will adequately describe the features as they pertain to each career path and will address employee concerns to ensure that everyone has a comprehensive understanding of the program. Training requirements vary from an overview of the Demonstration Project, to a more detailed package for the employees now entering the Demonstration Project, as well as very specific instructions for both civilian and military supervisors, managers, and others who provide personnel and payroll support.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the Demonstration Project for covered employees is accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate broadband level without loss of pay, using an 890 Nature of Action Code. Employees are converted into the career path and broadband level which includes their permanent GS/GM grade and occupational series of record, unless there are extenuating circumstances which require individual attention, such as special pay rates or pay retention. Adverse action provisions do not apply to the conversion process as there is no change in total adjusted pay.

Under the GS pay structure, employees progress through their assigned grade in step increments. In the Demonstration Project, basic pay progression through the levels depends on contribution to the mission and there are no scheduled within-grade increases (WGIs). Rules governing WGI under the current AF performance plan will continue in effect until the implementation date. Adjustments to the employees' basic pay for WGI equity will be computed effective the date of conversion. WGI equity is acknowledged by increasing basic pay rates by a prorated share based upon the number of days an employee has completed towards the next higher step. Employees at step ten on the date of implementation are not eligible for WGI equity adjustments since they are already at the top of the step scale. As under the GS system, supervisors are able to withhold these partial step increases if the employee's performance has fallen below fully successful.

All employees are eligible for future locality pay increases of the geographical areas of their official duty station. Special Salary Rates are not applicable to Demonstration Project employees. Employees on special salary rates at the time of conversion receive a new basic pay rate which is computed by dividing their highest adjusted basic pay (*i.e.,* special pay rate or, if higher, the locality rate) by the computation of one plus the locality pay factor for their area. Multiply the new basic pay rate by the locality pay factor and add the result to the new basic pay rate to obtain the adjusted basic pay, which is equal to the adjusted basic pay prior to conversion.

Grade and pay retention entitlements are eliminated. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the assigned permanent position of record, not the retained grade. The employee's basic pay and adjusted basic pay while on grade retention status will be used in setting appropriate pay upon conversion and in determining the amount of any WGI buy-in. An employee's adjusted basic pay will not be reduced upon conversion.

Employees serving under regular term appointments at the time of conversion to the Demonstration Project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures.

In order to ensure full employee compensation toward previous performance, AFRL may conduct a GS annual or close-out appraisal which may include a performance award. If an annual CCS assessment is not possible due to the conversion date (*i.e.,* less than a 90-day evaluation period), employees will be entitled to the general pay increase typically effective in January.

B. Conversion to Another Personnel System

1. Demonstration Project Termination

(a) In the event the Project ends, a conversion back to the former or to an applicable Federal Civil Service system may be required. The grade of employees' positions in the new system will be based upon the position classification criteria of the gaining system. Employees, when converted to their positions classified under the new system, may be eligible for pay retention under 5 CFR part 536, if applicable.

(b) However, an employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in band or a reduction within the same pay band due to unacceptable performance.

2. Employees Voluntarily Leave the Demonstration Project

If a Demonstration Project employee accepts a position in the GS or another pay system, the following procedures will be used to convert the employee's broadband level to a GS-equivalent grade and the employee's Demonstration Project basic pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the Demonstration Project and any accompanying geographic movement, promotion, or other simultaneous action.

An employee in a broadband level corresponding to a single GS grade is provided that grade as the GS-equivalent grade. An employee in a broadband corresponding to two or more grades is determined to have a GS-equivalent grade corresponding to one of those grades according to the following rules:

(a) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 1 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

i. The GS base schedule;

ii. The locality rate schedule for the locality pay area in which the position is located; or

iii. The appropriate special rate schedule for the employee's occupational series, as applicable.

If The series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the Demonstration Project (before any other action).

(c) For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the Project (*e.g.,* promotion rules, highest previous rate rules, and/or pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the Demonstration Project.

VI. Project Duration and Changes

Public Law 103–337 removed any mandatory expiration date for this Demonstration Project. The Project evaluation plan adequately addresses how each intervention is comprehensively evaluated.

Many aspects of a Demonstration Project are experimental. Minor modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. Flexibilities published in this **Federal Register** shall be available for use by all STRLs, if they wish to adopt them.

VII. Evaluation Plan

Authorizing legislation mandates evaluation of the Demonstration Project to assess the merits of Project outcomes and to evaluate the feasibility of applications to other Federal organizations. The overall evaluation consists of two components—external and internal evaluation. The external evaluation for the AF Laboratory Demonstration is part of a larger effort involving evaluation of demonstration projects in reinvention laboratories in three military services. External evaluation was originally overseen by the Office of Merit Systems Oversight and Effectiveness, OPM, and the Director, Defense Research and Engineering (DDR&E) and Civilian Personnel Policy (CPP), DoD. OPM's Personnel Resources and Development Center (PRDC) served as external evaluator for the first five years of the Project to ensure the integrity of the evaluation process, outcomes, and interpretation of results. After the five-year point decision to continue the Demonstration Project, AFRL opted out of OPM's external evaluation effort and continued its own internal evaluation. AFRL intends to continue the same level of evaluation with the addition of the expanded project coverage.

The main purpose of the evaluation is to determine the effectiveness of the personnel system changes as they are expanded to cover additional segments of the AFRL population and to ensure that there are no unintended adverse outcomes of the changes. To the extent possible, cause-and-effect relationships between the changes and personnel system effectiveness criteria will be established. The evaluation approach uses the intervention impact model shown in Table 3, which specifies each personnel system change as an intervention; the expected effects of each intervention; the corresponding measures of these effects; and the data sources for obtaining the measures.

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TABLE 3. INTERVENTION IMPACT EVALUATION MODEL

INTERVENTIONS	EXPECTED EFFECTS	MEASURES	DATA SOURCES
1. Compensation			
a. Broadbanding	A. Increased organizational Flexibility	1. Perceived flexibility	Attitude survey
	B. Reduced administrative work load, paperwork reduction	1. Actual/perceived time savings	Personnel office data, attitude survey
	C. Advanced in-hire rates	1. Starting basic pay rates of banded vs. non-banded employees	Work force data
	D. More gradual pay progression at entry levels	1. Progression of new hires over time by band, career path	Work force data
	E. Increased pay potential/ higher average basic pay	1. Mean basic pay rates by band, career path, demographics	Work force data
	F. Increased satisfaction with Advancement	1. Employee perceptions of advancement	Attitude survey
	G. Increased pay satisfaction	1. Pay satisfaction, internal/external equity	Attitude survey
	H. Improved recruitment	1. Offer/acceptance ratios	Personnel office data
		2. Percent declinations	Personnel office data
b. Conversion buy-in and buy-up to minimum for band	A. Employee acceptance	1. Employee perceptions of equity, fairness	Attitude survey
		2. Cost as a percent of payroll	Work force data
2. Contribution/Performance Management and Assessment			
a. Cash awards/ bonuses	A. Reward/motivate contribution/performance	1. Amount and number of awards by career path, demographics performance	Work force data
		2. Perceived motivational power	Attitude survey
		3. Perceived fairness of awards	Attitude survey
b. Contribution-based pay progression	A. Increased pay-contribution link	1. Pay-contribution correlations	Work force data
		2. Perceived pay-contribution link	Attitude survey
		3. Perceived fairness of ratings	Attitude survey
		4. Satisfaction with ratings	Attitude survey
		5. Employee trust in supervisors	Attitude survey
	B. Improved contribution/ performance feedback	1. Effectiveness of contribution/ performance feedback	Attitude survey
	C. Increased retention of high Contributors	1. Turnover by contribution assessment	Work force data
	D. Increased turnover of low Contributors	1. Turnover by contribution assessment	Work force data
c. Contribution development	A. Better communication of contribution expectations	1. Feedback and coaching procedures used	Focus group
		2. Time spent on training by demographics	Project office data/training records
	B. Improved satisfaction and quality of workforce	1. Organizational commitment	Attitude survey
		2. Perceived workforce quality	Attitude survey
3. Classification			
a. Improved classification system in an automated mode	A. Reduction in amount of time and paperwork spent on classification	1. Time spent on classification procedures	Personnel office data
		2. Reduction of paperwork/number of personnel actions (classification/promotion)	Personnel office data
	B. Ease of use	1. Managers' perceptions of time savings, ease of use, improved ability to implement requests	Attitude survey
b. Classification authority delegated to managers	A. Increased supervisory authority/accountability	1. Perceived authority	Attitude survey
	B. Decreased conflict between management and personnel office staff	1. Number of classification disputes/appeals pre/post	Personnel office records
		2. Management satisfaction with service provided by personnel office	Attitude survey
	C. No negative impact on	1. Internal pay equity	Attitude survey

INTERVENTIONS	EXPECTED EFFECTS	MEASURES	DATA SOURCES
	internal pay equity		
4. RIF			
a. Modified RIF	A. Minimize loss of high contributing employees with needed skills	1. Separated employees by demographics, contribution	Workforce data Attitude survey/focus groups
		2. Satisfaction with RIF process	Attitude survey/focus groups
	B. Contain cost and disruption	1. Cost comparisons of traditional vs. modified RIF	Personnel/budget office data
		2. Time to conduct RIF	Personnel office data
		3. Number of appeals/ reinstatements	Personnel office data
5. Development Opportunities Program			
a. Developmental Opportunities	A. Expanded range of professional growth and development	1. Number and type of opportunities taken	Workforce data
6. Hiring			
a. Streamlined examining process	A. Improved hiring timeliness	1. Managers' perceptions of time savings, ease of use, improved ability to hire	Attitude survey
		2. Time spent on hiring process	Personnel office data
b. Distinguished Scholastic Achievement Appointment	A. Improved hiring timeliness	1. Managers' perceptions of time savings, ease of use, improved ability to hire	Attitude survey
		2. Time spent on hiring process	Personnel office data
7. Combination of All Interventions			
a. All	A. Improved organizational effectiveness	1. Combination of personnel measures	All data sources
	B. Improved management of R&D workforce	1. Employee/management satisfaction	Attitude survey

VIII. Demonstration Project Costs

The goal of this Demonstration Project is a system in which payroll costs and resource utilization can be controlled consistent with the organization's fiscal strategies. This Demonstration Project consists of a system of pay incentives and processes that are flexible and can operate in harmony with the operational and financial needs of the larger organization. The costs of the Project are borne by AFRL. Costs associated with the Demonstration Project include DCPDS and software automation, training, WGI buy-in, buy-up to minimum for band, and Project evaluation. The timing of the expenditures depends on the implementation schedule. Because automation requirements will be minimized as a result of existing software system similarities, costs are estimated to be below $100K.

IX. Required Waivers to Law and Regulation

The following waivers and adaptations of certain title 5, U.S.C. and title 5, CFR provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to title 5, U.S.C.

Chapter 31, section 3111: Acceptance of Volunteer Service. (This section is waived to allow for a Voluntary Emeritus Corps.)

Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. (This section is waived with respect to the scholastic achievement appointment authority.)

Chapter 33, sections 3317(a) and 3318(a): Competitive Service; Related to certification and selection from registers. (These sections are waived to eliminate the "rule of three.")

Chapter 33, section 3319: Alternative Ranking and Selection Procedures. (This section is waived to eliminate quality categories.)

Chapter 33, section 3321: Competitive Service; Probationary Period. (This section waived only to the extent necessary to replace "grade" with "broadband level.")

Chapter 33, section 3341: Details; Within Executive or Military Departments. (This section is adapted to the extent necessary to waive the time limits for details.)

Chapter 35, section 3502: Order of Retention. (This section waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice.)

Chapter 43, sections 4301–4305: Related to performance appraisal. (These sections are waived to the extent necessary to allow provisions of the contribution-based compensation system as described in this **Federal Register** notice.)

Chapter 51, sections 5101–5102(a)(5), 5103, and sections 5104–5112: Related to classification standards and grading. (These sections are waived to the extent necessary to allow classification provisions described in this **Federal Register** notice.)

Chapter 53, sections 5301–5307: Related to pay comparability system and General Schedule pay rates. (This waiver applies to the extent necessary to allow: (1) Demonstration Project employees to be treated as GS employees and (2) basic rates of pay under the Demonstration Project to be treated as scheduled rates of basic pay.

Chapter 53, sections 5331–5336: These waivers apply to the extent necessary to allow: (1) Demonstration Project employees to be treated as GS employees; (2) to allow the provisions of this **Federal Register** notice pertaining to setting rates of pay; and (3) waive sections 5335 and 5336 in their entirety.

Chapter 53, sections 5361–5366: Grade and Pay Retention. (These sections waived to the extent necessary to: (1) Replace "grade" with "broadband;" (2) allow Demonstration project employees to be treated as GS employees; and (3) sections 5362–5366 are waived in their entirety to allow provisions of this **Federal Register** pertaining to grade and pay retention.)

Chapter 55, sections 5545 and 5547: Related to premium pay. (These sections waived to the extent necessary to allow Demonstration Project employees to be treated as GS employees.)

Chapter 57, sections 5753–5755: Related to recruitment, relocation, retention payments, and supervisory differential. (These sections waived to the extent necessary to allow: (1) Employees and positions under the Demonstration Project to be treated as employees and positions under the GS and (2) that management may offer a

bonus to incentivize geographic mobility to a SCEP student.)

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), (a)(1)(B), and (a)(1)(C)(ii): Related to removal, suspension, and reduction in grade or pay. (These sections are waived to the extent that they refer to one or two years of continuous service to allow up to a three-year probationary period for S&Es.)

Chapter 75, section 7512(3): Related to adverse action. (This section waived to the extent necessary to: (1) Replace "grade" with "broadband level;" and (2) exclude reductions in broadband level not accompanied by a reduction in pay.)

Chapter 75, section 7512(4): Related to adverse action. (This section is waived to the extent necessary to provide that adverse action provisions do not apply to conversions from GS special rates to Demonstration Project pay, as long as total pay is not reduced.)

B. Waivers to Title 5, CFR

Part 213, section 213.3202: Tenure Group. (Amended to allow excepted service employees to be in tenure group I.)

Part 300, sections 300.601–300.605: Time-in-Grade Restrictions. (Time-in-grade restrictions are eliminated in this demonstration project.)

Part 308, sections 308.101–308.103: Volunteer Service. (Amended to allow for a Voluntary Emeritus Corps.)

Part 315, sections 315.801(a); (b)(1); (c) and (e); and sections 315.802(a) and (b)(1): Related to probationary period. (Amended to allow for extended probationary or trial period of 3 years for all newly hired S&E employees.)

Part 315, section 315.901 and 315.907: Probation on Initial Appointment to a Supervisory or Managerial Position. (This section waived only to the extent necessary to replace "grade" with "broadband level.")

Part 316, sections 316.301, 316.303, and 316.304: Term Employment. (These sections are waived to allow modified term appointments as described in this **Federal Register** notice.)

Part 332, sections 332.401 and 332.404: Order on Registers and Order of Selection from Certificates. (These sections are waived to the extent necessary to allow: (1) No rating and ranking when there are 15 or fewer qualified applicants and no preference eligibles; (2) the hiring and appointment authorities as described in this **Federal Register** notice; and (3) elimination of the "rule of three.")

Part 335, section 335.103(c): Agency Promotion Programs. (This section is waived to the extent necessary to: (1) Allow non-competitive temporary job changes as described in this **Federal Register** notice and (2) expand discretionary exemptions to agency promotion programs.)

Part 337, section 337.101(a): Rating Applicants. (This section is waived when there are 15 or fewer qualified applicants and no preference eligibles.)

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. (These subparts are waived to the extent necessary to allow for a Voluntary Emeritus Corps and to allow excepted service employees to be in tenure group I.)

Part 351, Reduction-in-Force. (This part is waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice. In accordance with this FRN, AFRL will define the competitive area, retention standing, and displacement limitations.) Specific waivers include: sections 351.402–351.404: Scope of Competition; sections 351.501–351.504: Retention Standing; sections 351.601–351.608: Release from Competitive Level; and section 351.701: Assignment Involving Displacement.

Part 430, subpart A and subpart B: Performance Management; Performance Appraisal. (These subparts are waived to the extent necessary to allow provisions of the contribution-based compensation system as described in this **Federal Register** notice.)

Part 432, sections 432.101–432.105: Regarding performance based reduction in grade and removal actions. (These sections are waived to the extent necessary to: (1) Replace "grade" with "broadband;" (2) exclude reductions in broadband level not accompanied by a reduction in pay; and (3) allow provisions of CCS and addressing inadequate contribution as described in this **Federal Register** notice.)

Part 511, subpart A, subpart B: Classification under the General Schedule. (These subparts are waived to the extent necessary to allow classification provisions outlined in this **Federal Register** notice.)

Part 511, sections 511.601–511.612: Classification Appeals. (These sections are waived to the extent necessary to: (1) Replace "grade" with "broadband;" (2) add to the list of issues that are neither appealable or reviewable, the assignment of series under the project plan to appropriate career paths; and (3) to allow informal appeals to be decided by the AFRL pay pool manager. Formal appeal rights are unchanged.)

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. (This subpart is waived in its entirety.)

Part 531, subpart B: Determining Rate of Pay; subpart D: Within-Grade Increases; subpart E: Quality Step Increases. (These subparts are waived in their entirety to allow for the pay setting provisions as described in this **Federal Register** notice.)

Part 531, subpart F: Locality Payments. (This subpart is waived to the extent necessary to allow: (1) Demonstration Project employees to be treated as GS employees; (2) replace "grade" with "broadband;" and (3) to allow basic rates of pay under the Demonstration Project to be treated as scheduled rates of basic pay.)

Part 536, subpart A, subpart B, and subpart C: Grade and Pay Retention. (These subparts are waived in their entirety.)

Part 550, section 550.703: Severance Pay. (This section is waived to the extent to allow AFRL to define reasonable offer.)

Part 550, section 550.902: Hazard Pay. (Definition of "employee," is waived only to the extent necessary to allow Demonstration Project employees to be treated as GS employees.)

Part 575, sections 575.103(a), 575.203(a), 575.303(a), and subpart D: Recruitment and Relocation Bonuses; Retention Allowances; Supervisory Differentials. (These sections are adapted to the extent necessary to allow employees and positions under the Demonstration Project to be treated as employees and positions under the General Schedule. Subpart D is waived in its entirety; pay is based on employee contribution.)

Part 575, sections 575.201; 575.202; 575.205(a), (b); 575.206(a)(1); (b), (c); 575.207(a)(3); and 575.208(a)(1)(i), (a)(1)(iv), and (a)(3): Relocation Incentives. (These sections waived to the extent necessary to allow: (1) Relocation incentives to new SCEP students; (2) employees and positions under the Demonstration Project to be treated as employees and positions under the General Schedule; and (3) relocation incentives to SCEP students whose worksite is in a different geographic location than that of the college enrolled.)

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Nonforeign Areas. (This subpart is adapted to the extent necessary to allow employees and positions under the Demonstration Project to be treated as employees and positions under the General Schedule.)

Part 752, sections 752.101 and 752.301: Adverse Actions. (This section is waived to the extent that they refer to one or two years of continuous service

to allow up to a three-year probationary period for S&Es.)

Part 752, section 752.401(a)(3): Reduction in Grade. (This section is waived to the extent necessary to replace "grade" with "broadband" and to exclude reductions in broadband level not accompanied by a reduction in pay.)

Part 752, section 752.401(a)(4): Reduction in Pay. (This section is waived to the extent necessary to provide that adverse action provisions do not apply to conversions from GS special rates to Demonstration Project pay, as long as total pay is not reduced.)

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APPENDIX A. OCCUPATIONAL SERIES INCLUDED IN THE AFRL PERSONNEL MANAGEMENT DEMONSTRATION PROJECT (AS OF JANUARY 2009)

Series	Occupation	Series	Occupation
Occupational Series within the Scientist and Engineer Career Path (DR pay plan)			
0101	Social Scientist	0854	Computer Engineering
0180	Psychology	0855	Electronics Engineering
0190	General Anthropology	0858	Biomedical Engineering
0199	Social Science Student Trainee	0861	Aerospace Engineering
		0892	Ceramic Engineering
0401	General Biological Science	0893	Chemical Engineering
0403	Microbiology	0896	Industrial Engineering
0405	Pharmacology	0899	Engineering & Architecture Student Trainee
0413	Physiology		
0414	Entomology	1301	General Physical Science
0415	Toxicology	1306	Health Physics
0601	General Health Science	1310	Physics
0662	Optometrist	1313	Geophysics
0665	Speech Pathology & Audiology	1320	Chemistry
		1321	Metallurgy
0701	Veterinary Medical Science	1330	Astronomy & Space Science
0801	General Engineering	1340	Meteorology
0803	Safety Engineering	1370	Cartography
0804	Fire Protection Engineering	1399	Physical Science Student Trainee
0806	Materials Engineering	1515	Operations Research
0808	Architecture	1520	Mathematics
0810	Civil Engineering	1529	Mathematical Statistician
0819	Environmental Engineering	1530	Statistician
0830	Mechanical Engineering	1550	Computer Science
0840	Nuclear Engineering	1599	Mathematics & Statistics Student Trainee
0850	Electrical Engineering		
Occupational Series within the Business Management and Professional Career Path (DO pay plan)			

Series	Occupation	Series	Occupation
0018	Safety & Occupational Health Management	0690	Health System Specialist
0028	Environmental Protection Specialist	0905	General Attorney
0030	Fitness & Sports Specialist	0950	Paralegal Specialist
0080	Security Administration	1020	Illustrator
0099	Security Student Trainee	1035	Public Affairs Specialist
0101	Social Scientist	1040	Language Specialist
0110	Economist	1060	Photography
0130	Foreign Affairs	1071	Audiovisual Production
0131	International Relations	1082	Writer & Editor
0132	Intelligence	1083	Technical Writing & Editing
0170	History	1084	Visual Information Specialist
0201	Human Resources Management	1101	General Business & Industry
0301	Misc Administration & Program	1102	Contracting Specialist
0340	Program Management	1150	Industrial Specialist
0341	Administrative Officer	1152	Production Control
0343	Management & Program Analyst	1170	Realty Specialist
0346	Logistics Management Specialist	1199	Business & Industry Student Trainee
0391	Telecommunications Specialist	1222	Patent Attorney
0399	Administrative/Office Support Student Trainee	1410	Librarian
0501	Financial Administration & Program	1412	Technical Information Services
0505	Financial Management	1601	Equipment, Facilities, & Services
0510	Accountant	1640	Facility Operations Specialist
0560	Budget Analyst	1654	Printing Services
0599	Financial Mgmt Student Trainee	1670	Equipment Specialist
0644	Medical Technologist	1712	Training Specialist
0669	Medical Records Administration	1730	Education Research
0671	Industrial Hygiene	1740	Education Services Specialist
		1750	Instructional Systems
		1910	Quality Assurance
		2001	General Supply
		2003	Supply Program Management
		2010	Inventory Management
		2130	Traffic Management
		2210	Information Technology Mgmt
		2299	Information Technology Student Trainee
Occupational Series within the Technician Career Path (DX pay plan)			

Series	Occupation	Series	Occupation
0181	Psychology Aid & Technician	0698	Environmental Health Technician
0404	Biological Science Technician	0802	Engineering Technician
0642	Nuclear Medicine Technician	0809	Construction Control Technical
0645	Medical Technician	0856	Electronics Technical
0647	Diagnostic Radiologic Technologist	1311	Physical Science Technician
		1521	Mathematics Technician
0649	Medical Instrument Technician		
Occupational Series within the Mission Support Career Path (DU pay plan)			
0083	Police	0679	Medical Clerk
0085	Security Guard	0681	Dental Assistant
0086	Security Clerical & Assistant	0899	Engineering & Architecture Student Trainee
0099	Security Student Trainee		
0199	Social Science Student Trainee	0963	Legal Instruments Examining
		0986	Legal Assistant
0303	Miscellaneous Clerk & Assistant	1101	General Business & Industry
		1105	Purchasing Agent
0305	Mail & File Clerk	1106	Procurement Clerk & Technician
0318	Secretary	1152	Production Control
0326	Office Automation Clerical	1199	Business & Industry Student Trainee
0335	Computer Clerk & Assistant	1399	Physical Science Student Trainee
0344	Management & Program Clerical & Assistance	1411	Library Technician
		1599	Mathematics & Statistics Student Trainee
0399	Administrative/Office Support Student Trainee	1603	Equipment, Facilities, & Services Assistant
0503	Financial Clerk & Technician		
0525	Accounting Technician	1702	Education & Training Technician
0540	Voucher Examiner	2001	General Supply
0561	Budget Clerk & Assistant	2005	Supply Clerical & Technician
0599	Financial Management Student Trainee	2102	Transportation Clerk & Asst
		2131	Freight Rate Assistant
0650	Medical Technical Assistant	2299	Information Technology Student Trainee
0675	Medical Records Technician		

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Appendix B: Descriptors Sorted by Career Path, Broadband Level, and Factor

Scientists and Engineers Career Path (DR):

Level I Descriptors

Problem Solving Factor: Applies knowledge of science, technology, or processes to assigned tasks. Efforts are within the technology area or own organization. Analyzes and resolves routine to moderately-difficult problems within assigned area, often under the guidance of senior personnel. Develops limited variations to established methods and/or techniques. Uses judgment in selecting, interpreting, and adapting known scientific principles. Considers existing approaches and researches novel alternatives. Efficiently provides solutions that resolve assigned problems with some oversight/assistance from senior personnel. Completed work is reviewed for soundness, appropriateness, and conformity. Capability is recognized within own organization.

Communication Factor: Prepares information to use within own organization and technical area. Exchanges information with other functional areas or external contacts. Documents routine information in a clear and timely manner. Effectively utilizes communications tools to contribute to reports, documents, presentations, etc. Presents routine information in a clear and timely manner. Actively listens and responds appropriately. Develops speaking skills for basic briefings and effectively adjusts to the audience with guidance. Provides reports, documents, and presentations to senior personnel for review. Makes necessary revisions per guidance from senior personnel.

Technology Management Factor: Interacts within technical area on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of technical goals within own organization. Participates in technology area planning within own organization. Contributes technical ideas to proposal preparation and new technology development. Efficiently performs tasks utilizing available resources, including one's own time, to successfully accomplish assigned work. Provides inputs to risk management and process improvements. Contributes within own organization to the development and transition of technology solutions. Seeks out and uses relevant outside technologies to support own technical and functional activities.

Teamwork and Leadership Factor: Performs work within a team that improves capability of a technology area or organization. Coordinates actions and gains understanding of other areas sufficiently to make appropriate recommendations. As team member, makes positive contributions in assigned areas to meet team goals. Shares relevant knowledge and information with others. Develops positive working relationships with peers and superiors alike. Maintains

currency in area of expertise. Actively seeks guidance/opportunities to improve/expand skills. Receives close guidance from others. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures.

Level II Descriptors

Problem Solving Factor: Develops or modifies new methods, approaches, or scientific knowledge to solve challenges. Efforts involve multiple technology areas or organizations. Applies knowledge of science/technology to analyze and resolve multifaceted issues/problems with minimal guidance. Develops comprehensive modifications to established methods and/or techniques. Uses judgment and originality in developing innovative approaches to define and resolve highly complex situations. Approaches to solving problems require initiative and resourcefulness in interpreting and applying scientific principles that are applicable but may be conflicting or not clearly understood. Consults appropriately to develop objectives, priorities, and deadlines. Plans and carries out work that is well aligned with organizational goals. Completed work is generally accepted upon review. Expertise is recognized internally and externally by academia, industry, or government peers.

Communication Factor: Provides information to peers, senior technical leaders, and/or managers within and beyond own organization to influence decisions or recommend solutions. Exchanges information with established internal/external networks. Documents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Authors reports, documents, and presentations pertaining to area(s) of expertise. Presents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Actively listens to others' questions, ideas, and concerns and considers diverse viewpoints. Demonstrates effective speaking skills for advanced briefings, tailoring presentations to facilitate understanding. Reviews own communication products prior to submittal to peers, senior technical leaders, managers, and/or external contacts, resulting in minimal revision. May assist with the communications of others.

Technology Management Factor: Collaborates with technical area stakeholders to develop strategies for effective execution within a particular technology area. Executes activities within and beyond own organization that ensure the technology mission. Recognizes opportunities and formulates plans within own organization. Generates key ideas and contributes technically to proposal preparation and marketing to establish new business opportunities. Identifies and advocates for resources necessary to support and contribute to mission requirements. Demonstrates knowledge of corporate processes by effective application of resources. Actively manages cost, schedule, and resource risks seeking timely remedies. Engages others in using resources more efficiently and suggests innovative ideas to optimize available resources. Implements the development and transition/transfer of technology solutions, within or beyond own organization, based upon awareness of customer requirements. Evaluates and incorporates appropriate outside technology to support research and development.

Teamwork and Leadership Factor: Performs work as a key team member or leads others to improve capability of a technology area or organization. Integrates efforts or works across disciplines. Provides consultation on complex issues. As lead or key team member, makes significant contributions to meet team goals in support of the organizational goals. Works collaboratively with others in a dynamic environment, demonstrating respect for other people and alternative viewpoints. Recognizes when others need assistance and provides support. Assists in the development and training of internal/external team members. Works to develop/improve self in order to more effectively accomplish team goals. May recommend selection of team members. Receives general guidance in terms of established policies, objectives, and decisions from others. Discusses novel concepts and significant departures from previous practices with supervisor or team leader.

Level III Descriptors

Problem Solving Factor: Performs duties across a broad range of activities that require substantial depth of analysis and expertise. Implements or recommends decisions which impact science or technology. Applies and expands knowledge of science/technology to resolve critical, multifaceted problems and/or develops new theories or methods. Adapts to tasks involving changes or competing requirements. Uses judgment and ingenuity in making decisions/developing technologies for areas with substantial uncertainty in methodology, interpretation, and/or evaluation. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles. Actively engages organizational planning activities. Defines and leads work efforts that are focused on organizational priorities. Results of work are considered authoritative. Expertise is recognized at the national level across the Laboratory, service, DoD agencies, industry, and/or academia.

Communication Factor: Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders. Collaborates with broad functional and technical areas. Leads documentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports, documents, and presentations pertaining to multiple areas of expertise. Leads presentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Seeks opinions and ideas from others and carefully considers and incorporates diverse viewpoints. Demonstrates expert speaking skills and adaptability for critical briefings. Produces required forms of communication with minimal guidance from others. Reviews communications of others for appropriate and accurate content.

Technology Management Factor: Leads technology partners in highly complex technical areas to develop strategies for research and development programs. Leads development and execution at a broad level in the Laboratory to advance the technology mission. Leads/contributes significantly to program definition and/or planning. Pursues near-term business opportunities by exploiting internal and/or external resources. Identifies and develops mission relevant solutions while leveraging collaborations across the Laboratory. Monitors evolution of cost, schedule, and resource risk. Anticipates changes in resource requirements and develops and advocates solutions in advance. Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources. Leads development and transition/transfer activities based upon extensive customer interactions and appropriate partnerships. Develops technology solutions by exploiting external

technology to enhance research and development.

Teamwork and Leadership Factor: Leads critical aspects of team or technology area with focused accountability for quality and effectiveness. Integrates efforts across disciplines. Sought out for consultation on complex issues that affect internal/external organizations and/or relationships. Effectively seeks out and capitalizes on opportunities for collaboration to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams. Leads and supports the development and training of subordinates and/or internal/external team members. Actively seeks out mentoring opportunities. Proactively develops/improves self in order to more effectively accomplish organizational goals. Recommends selection and/or selects team members. Receives only broad policy/guidance. Provides guidance/direction to others. May participate in position and performance management.

Level IV Descriptors

Problem Solving Factor: Defines, leads, and manages an overall technology area which includes multidisciplinary science and technology (S&T) and/or non-S&T aspects. Makes critical decisions which significantly impact science or technology. Applies considerable judgment to resolve critical, multifaceted problems spanning multiple disciplines. Expertly accomplishes tasks or resolves issues involving significant uncertainties, changes, or competing requirements. Using broadly stated organizational goals fosters a culture which rewards ingenuity and generates/implements innovative ideas for developing new technologies. Develops innovative approaches which significantly expand the scientific knowledge base and/or the overall effectiveness of the organization. Sets objectives and plans, designs, and directs work to meet evolving organizational goals. Agency provides only broadly defined missions and functions. Leadership is recognized at the national/international level across various laboratories, services, DoD, industry and/or academia.

Communication Factor: Communicates with a wide range of peers/organizations across multiple levels inside and outside the Laboratory to influence major technical, programmatic, and/or management activities. Builds collaborative relationships across broad functional and technical areas and engages with leaders at the national and/or international level. Promotes a culture of excellence in synthesizing and documenting diverse and highly complex information, concepts, and ideas. Authors and directs authoritative reports, documents, and presentations integrating multiple disciplines. Develops strategies to improve presentations of diverse and highly complex information, concepts, and ideas. Fosters an atmosphere of respect for others at all levels and promotes expression of alternative viewpoints. Displays mastery of speaking skills and delivers compelling, authoritative briefings. Establishes guidance and oversight requirements for communication in their organizational or technical area. Responsible and accountable for overall development of reports, documents, and presentations of self and others within area of responsibility.

Technology Management Factor: Integrates wide-ranging activities at a national/international level, involving multiple technical areas, to develop strategic technology solutions. Directs program/process formulation and implementation to achieve the mission goals at the Laboratory/multi-agency level. Leads requirements generation, strategic planning, and prioritization. Creates business opportunities based upon market awareness and exploitation of internal and/or external resources. Identifies, proposes, and develops diverse and timely mission relevant solutions while leveraging national/international collaborations. Manages and defends the resources needed to achieve organizational goals and expertly guides the implementation of these resources in a dynamic environment. Leads, promotes, and enables process improvements to maximize resource utilization. Leads world class research and development programs based upon anticipating customer requirements and leveraging national/international activities. Develops innovative solutions that exploit emerging technology and fosters an environment of technology exploitation.

Teamwork and Leadership Factor: Leads/manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Has broad and substantial impact on organizational decisions affecting internal/external organizations and/or relationships. Cultivates and sustains a professional environment of cooperation, cohesion, and teamwork. Formulates short- and long-term teaming/collaboration strategies across organizations/disciplines. Establishes team charters. Builds coalitions to establish integrated approaches that meet overall organizational mission requirements. Mentors and develops future organizational leaders and personnel through evaluations/feedback. Fosters a culture that encourages and rewards mentoring and development. Proactively develops/improves self in order to more effectively accomplish agency goals. Identifies and addresses skill deficiencies and selects team members. Works within the framework of agency policies, mission objectives, and time and funding limitations with minimal oversight. Establishes policy and/or provides guidance/direction to others. Responsible for position and performance management.

Business Management and Professional Career Path (DO):

Level I Descriptors

Problem Solving Factor: Applies knowledge of business management or a professional field to perform duties supporting and/or improving the efficiency and productivity of the organization. Analyzes and resolves difficult but routine problems within assigned area of responsibility, sometimes under the guidance of a senior specialist. Includes minor adaptation to established methods and techniques. Plans and carries out work based on established guidelines and supervisor's stated priorities and deadlines. Completed work is evaluated for soundness, appropriateness, and conformity to policy and requirements. Uses judgment in selecting, interpreting, and adapting guidelines that are readily available.

Communication Factor: Factual information and material is normally presented to individuals within immediate office or within own organization, but may involve external contacts. Communicates routine information in a clear and timely manner. Develops formal written communication often with supervisory review and revision. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to the audience's level of understanding. Has speaking skills required to deliver basic briefings.

Business Management Factor: Interacts with customers on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of business goals of the organization. Provides timely, flexible, and responsive products and/or services to customers under guidance of senior specialist or supervisor. Contributes ideas for improvement of established services based on knowledge of a variety of business management or professional programs and systems and an understanding of customer needs. Demonstrates knowledge of available resources and the process for acquiring the resources needed to accomplish assigned work. Makes effective use of available resources including one's own time.

Teamwork and Leadership Factor: Makes positive contributions to all aspects of the overall team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities. Performs work that affects the accuracy, reliability, or acceptability of broader projects and programs. Coordinates joint actions and gains understanding of other areas sufficient to make appropriate recommendations. Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. May participate as a member of cross-functional teams. May select or recommend selection of staff or team members.

Level II Descriptors

Problem Solving Factor: Develops new methods, criteria, policies, or precedents for business management or a professional field. Modifies or adapts established methods and approaches to complex issues that affect a wide range of organizational activities. May administer one or more complex programs within a functional area. Applies substantial knowledge of business management or a professional field to analyze and resolve highly complex issues and problems. Includes refinement of methods or development of new ones. Consults with supervisor to develop deadlines, priorities, and objectives. Plans and carries out work, effectively resolving most conflicts that arise. Keeps supervisor informed of potentially controversial issues. Completed work is reviewed primarily for meeting requirements and producing expected results. Uses initiative and resourcefulness in interpreting and applying policies, precedents, and guidelines that are applicable but may be conflicting or stated only in general terms. Uses considerable judgment and originality in developing innovative approaches to define and resolve highly complex situations.

Communication Factor: Communicates important concepts to influence decisions or recommend solutions with specialists and management officials in own organization. Occasionally communicates with individuals at higher levels and in other organizations. Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints and appropriately responds to questions or requests. Effectively adjusts communications to facilitate understanding. Tailors presentations and briefings to meet an audience's needs and level of understanding.

Business Management Factor: Works with customers to define/anticipate problems and develop strategies for effective resolution within a particular program area. Supports execution of activities that advance the business-related goals of the organization. Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs. Contributes key ideas and/or strategies to develop, implement, and promote new/improved programs or services applicable to business management or a professional field. Identifies and advocates for resources necessary to support and contribute to mission requirements. Maximizes use of available resources.

Teamwork and Leadership Factor: Contributes as lead or key member of the team performing the substantive analytical or professional duties in support of the organizational mission. Effectively carries out integrated advisory and program work. Leads/mentors/provides oversight to specialists at same or lower level. Regularly consulted by management officials on complex issues due to depth and breadth of expertise. Works collaboratively and flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. Recognizes when others need assistance and provides support. May participate as a member of cross-functional/integrated teams. Selects or recommends selection of staff or team members. Supports development and training of subordinates. Participates in mentoring and position/performance management.

Level III Descriptors

Problem Solving Factor: Performs duties across a broad range of activities that require substantial depth of analysis and organizational problem solving skills. Implements or recommends decisions which significantly impact agency policies/programs. Resolves critical problems or develops new theories for work products or services which affect the work of other experts, the development of major aspects of business management programs or missions, or impacts a large number of people. Assignments involve continual program changes or conflicting requirements. Supervisor outlines general objectives. Independently plans and carries out the work. Complex issues are resolved without reference to supervisor except for matters of a policy nature. Results are considered technically authoritative and are normally accepted without significant change. Uses judgment and ingenuity in making decisions in major areas of uncertainty in methodology, interpretation and/or evaluation. Guidelines require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, criteria, or propose new policies.

Communication Factor: Influences consensus among management officials within AFRL, AF, and in other agencies and organizations to accept ideas and implement recommendations designed to improve effectiveness of major programs and policies. Communicates complex information, concepts, and ideas in an accurate, clear, concise, well-organized, and timely manner. Written communication typically accepted without revision. Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses tone that respects and carefully considers diverse viewpoints, responding appropriately. Clearly communicates complex information, concepts, and ideas through briefings and presentations to a wide range of audiences.

Business Management Factor: Works jointly with customers to identify highly complex, sensitive, or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization. Establishes successful working relationships with customers to address and resolve highly

complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction. Develops effective plans and strategies for highly complex programs or services involving broad business management or a professional field. Successfully carries out and maintains such programs/services at a high level of customer awareness and satisfaction. Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.

Teamwork and Leadership Factor: Effectively seeks out and capitalizes on opportunities for the work unit to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles. Guides the critical aspects of programmatic and business management efforts of individuals and/or teams with focus on accountability, quality, and effectiveness. Has impact on business recommendations that affect both internal and external relationships. Leads and provides oversight to effectively manage integrated advisory and program services. Regularly consulted by management officials on highly complex issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams. Selects or recommends selection of staff, team members, and/or subordinate supervisors. Initiates development and training of subordinates. Participates in mentoring, motivation, coaching, instruction, and position/performance management.

Level IV Descriptors

Problem Solving Factor: Defines, leads, and manages an overall business management or professional program area which includes a full range of complex functional areas. Makes critical decisions which significantly change, interpret, or develop important agency policies/programs. Applies considerable judgment and ingenuity to interpret existing guidelines and develop policies and procedures for broadly based projects/programs. Independently plans, designs, and carries out programs, projects, studies, *etc.*, such that overall program objectives are met. Supervisor provides only broadly defined missions and functions. Results of work are considered technically authoritative and are almost always accepted without change. Guidelines are broadly stated and non-specific. Generates/implements innovative ideas for increasing overall effectiveness of the organization.

Communication Factor: Interacts with high-ranking officials to include AF level and other agencies and departments to influence major program policies and/or defend controversial decisions. May also communicate with leaders at the local, State, and/or national levels for similar purposes. Tailors style to communicate critical information effectively to diverse audiences at different levels. Accurately communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision. Receptive to alternative viewpoints. Clearly communicates complex information and ideas to a range of audiences. Shows respect for others and responds appropriately to people at all levels. Delivers compelling policy level briefings.

Business Management Factor: Interacts at senior management levels to negotiate and resolve conflicts concerning activity-wide policies and programs. Resolutions are communicated across the organization/agency. Contributes to the definition and improvement of processes that affect the business goals of the organization. Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for improving or expanding products and/or services, resulting in highly valued services that improve overall customer satisfaction. Generates strategic plans and objectives to develop, implement, and promote broadly-based programs and services to meet organizational needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services. Identifies, acquires, defends, and manages the resources needed to achieve organizational goals.

Teamwork and Leadership Factor: Formulates short- and long-term strategies across subordinate units to achieve significant results in support of the organization's goals and long-term vision. Leads and manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Builds coalitions to establish integrated approaches to meet overall organizational mission requirements. Sets and maintains a tone of cooperation, cohesion, and teamwork. Champions respect and value for others. Selects or recommends selection of staff, team members, and subordinate supervisors. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops future team leaders and supervisors.

Technician Career Path (DX):

Level I Descriptors

Problem Solving Factor: Applies basic knowledge to perform well-defined work activities with guidance. Performs specific procedures which are typically a segment of a project of broader scope. Work products affect the accuracy, reliability, or acceptability of further procedures, processes, or services. Performs duties that involve related and established steps, processes, or methods. Operates and adjusts varied equipment and instrumentation to perform standardized tests or operations involved in testing, data analysis, and presentation. Executes routine assignments without explicit instructions if standard work methods can be used. Resolves recurring routine problems with little supervision. Uses judgment in locating and selecting the most appropriate procedures, making minor deviations to adapt the guidelines to specific cases.

Communication Factor: Acquires or exchanges information with individuals on same team or within own organization for routine and recurring issues. May involve limited external contacts. Communicates routine information in a clear and timely manner. Written communication may require some revision. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.

Business Management Factor: Interacts with customers to communicate information and coordinate routine actions within area of assigned responsibility. Conducts duties in support of business goals of the organization. Provides timely, flexible, and responsive products and/or services to customers under guidance of senior technician or supervisor. Contributes ideas for improvement of products and services to project lead/supervisor based on an understanding of customer needs. Efficiently utilizes available resources, including one's own time, to successfully accomplish assigned work.

Teamwork and Leadership Factor: Makes positive contributions to specific

aspects of the team's responsibilities. Actively takes initiative to expand knowledge and assume more responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities. Provides work product that is a complete project of relatively conventional and limited scope or a portion of a larger project. Work requires a limited degree of coordination and integration of diverse phases carried out by others. Personal interactions foster cooperation and teamwork. Works effectively with others to accomplish tasks. Treats others respectfully and professionally. Provides information and assistance to others as needed. Attempts to handle minor work-related disagreements in a positive manner.

Level II Descriptors

Problem Solving Factor: Plans and conducts work which is a complete project of relatively limited scope or a portion of a large and more diverse project. Work affects the operation of systems, equipment, testing operations, research conclusions, or similar activities. Applies practical knowledge of different but established technical methods, principles, and practices within a narrow area to design, plan, and carry out projects. Assignments require study, analysis, and consideration and selection of several possible courses of action. Supervisor outlines overall requirements, providing general instructions regarding objectives, time limitations, and priorities. Plans and carries out successive steps and handles problems in accordance with accepted practices or instructions. Completed work is evaluated for technical soundness, appropriateness, and conformity. Applies knowledge and experience to a broad range of assignments. Seeks novel solutions where appropriate. Adapts previous plans/techniques to fit new situations.

Communication Factor: Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important technical concepts and requirements, or recommend solutions. Also, communicates with various individuals at higher levels and in other organizations. Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints. Tailors communications to ensure an effective level of understanding. Clearly responds to questions or requests, following up when appropriate.

Business Management Factor: Works with customers to define/anticipate problems and develop strategies for effective resolution within technical areas. Supports execution of activities that advance the business-related goals of the organization. Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs. Contributes key ideas and/or strategies to develop, implement, and apply new/improved methods and procedures applicable to technical areas. Anticipates, identifies, and advocates for resources necessary to support and contribute to mission requirements. Maximizes use of available resources.

Teamwork and Leadership Factor: Makes positive contributions to multiple aspects of the team's responsibilities. Shares knowledge and experience with team members. Provides a work product that is a complete conventional project, or a portion of a larger, more diverse project. Projects require coordination of several independent parts, each requiring independent analysis and solution. Works collaboratively and flexibly with others to accomplish team goals. Treats others respectfully and professionally. Shares relevant knowledge and information with others. Effectively contributes as a participating member on other teams. Supports development and training of subordinates and/or co-workers. Participates in mentoring and position/performance management.

Level III Descriptors

Problem Solving Factor: Establishes criteria, formulates projects, assesses program effectiveness, and investigates a variety of unusual conditions or problems in areas which affect a wide range of major activities. Identifies areas for investigation or improvement. Work affects the design of systems, equipment, testing operations, research conclusions, or similar activities. Applies considerable knowledge of a wide range of technical methods, principles, and practices to design, plan, and carry out complex projects. Assignments are frequently complicated by many operations which equipment or systems must perform, and many variables that must be considered. Precedents are sometimes absent or obscure. Handles conflicting issues. Supervisor outlines general requirements and objectives. Analyzes problems and develops approaches/work plans. Requires little to no technical advice or guidance. Technical decisions and recommendations are normally accepted by higher authority. Applies extensive knowledge to unusual or highly difficult assignments. Reviews, analyzes, and integrates work performed by others along with adaptations from changes in technology as they relate to the possible impact on projects, systems, or processes

Communication Factor: Communicates with employees and management officials both within own organization and in organizations outside the agency to resolve problems, accept ideas, and implement recommendations designed to improve effectiveness of operating systems, programs, equipment, or services. Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is typically accepted without revision. Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to audiences in a manner that facilitates understanding. Clearly responds to questions or requests with follow up when appropriate.

Business Management Factor: Works with customers to identify highly complex or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization. Establishes successful working relationships with customers to address and resolve highly complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction. Develops effective plans and strategies for highly complex products or services involving a broad technical area. Successfully carries out and maintains services at a high level of customer awareness and satisfaction. Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.

Teamwork and Leadership Factor: Is sought out for consultation and serves as a mentor to other team members. Seeks out opportunities to share experience and lessons learned with other team members, both internal and external to own organization. Manages highly difficult assignments in functional areas. Acts as a spokesperson

authorizing important modifications which conform to broad policy. Coordinates assignments with subject matter experts in other areas. Reviews, analyzes, and integrates work performed by other groups or individuals outside the organization. Builds effective partnerships across units. Volunteers and actively serves in leadership roles on integrated teams. Regularly consulted by others on significant issues. Deals with challenging conflicts in a manner that motivates and encourages cooperation. Develops options to resolve disagreements that may require resolution at a higher level. Provides recommendations for creation of teams. Develops and identifies new training needs for the professional growth of team members. Provides mentoring and position/performance management.

Level IV Descriptors

Problem Solving Factor: Provides expert advisory services and leadership for broad and complex programs, systems, and processes that advance the state of the art. Plans, organizes, and/or directs extensive development efforts associated with the latest advancements in technology. Projects are multi-disciplinary and are greatly affected by advances in technology. Projects are also characterized by highly complex problems for which precedents are lacking. Uses judgment and ingenuity to convert objectives into programs or policies. Adjusts broad activities to align with changing program needs. Supervisor outlines only broad policy and operational objectives/requirements. Technical supervision is limited to reviewing broad hypotheses and overall approach. Interpretations are generally accepted as technically authoritative. Creates new techniques, establishing criteria and/or developing new information. Approach is not easily determined and novel approaches or considerable modification of existing techniques is required. May contribute to or publish technical papers on modification of existing theories or technology.

Communication Factor: Interacts with individuals or groups in various agencies and departments to influence and/or defend controversial decisions. Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision. Prepares and delivers briefings to communicate complex information and ideas to a range of audiences in a manner that facilitates understanding. Receptive to alternative or dissenting viewpoints. Shows respect for others and responds appropriately to people at all levels.

Business Management Factor: Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of activities. Contributes to the definition and improvement of processes that affect the business goals of the organization. Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for evaluating and improving operations, equipment, and/or activities resulting in highly valued services that improve overall customer satisfaction. Stays appraised of current technologies and methods to develop techniques for new or modified work methods, approaches, or procedure for substantive functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services. Plans and allocates resources to accomplish multiple customer needs simultaneously across the organization. Develops and implements innovative approaches to attain goals and minimize resource expenditures.

Teamwork and Leadership Factor: Recognized as a prominent contributor to key technical fields as a leader of a productive team directly contributing to the organization's mission. Considered a leader in the conception and formulation of innovative concepts and ideas. Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant technical issues. Responsible for ensuring team composition is sufficient to meet program objectives. Contributes to achieving organizational goals by building flexible and effective partnerships. Successfully resolves sensitive conflicts. Actively works to ensure the continuous transfer of knowledge and skills throughout the work unit by serving as a technical resource and initiating or overseeing the development of formal knowledge sharing systems. Selects or recommends selection of staff and/or team members. Develops and identifies new training needs for the professional growth of subordinates. Directs and provides mentoring and position/performance management. May formally supervise at team-level.

Mission Support Career Path (DU)

Level I Descriptors

Problem Solving Factor: Performs clerical/assistant/support work involving the application of a body of standardized rules, procedures, or operations to resolve a variety of standard, recurring requirements. Work affects the quality and timeliness of products or services within the immediate office. Applies standard rules, procedures, or operations to accomplish repetitive tasks and resolve routine matters. Carries out recurring and routine work following supervisor's direction regarding work to be done, priorities, and specific procedures/guidelines to be followed. Completed work is reviewed for accuracy, timeliness, and adherence to instructions. Uses judgment in selecting and applying guidelines which are readily available.

Communication Factor: Communicates with individuals primarily in own organization in order to exchange information and present findings. Communicates routine information in a clear and timely manner. Written communication may require some revision. Clearly communicates status of assigned tasks. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions.

Business Management Factor: Interacts with customers on routine issues to communicate information and clarify instructions for tasking within area of assigned responsibility. Conducts administrative duties in support of business goals of the organization. Provides timely, flexible, and responsive products and/or services to customers under guidance of senior team member or supervisor. Suggests ideas for improvement of products and services based on an understanding of customer needs. Efficiently utilizes available resources to successfully accomplish assigned work. Appropriately prioritizes work; manages own time.

Teamwork and Leadership Factor: Contributes to specific aspects of the team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities. Provides work product or service of limited scope that requires a minimal degree of coordination and integration of work carried out by others. Personal attitude/conduct fosters cooperation and teamwork needed to accomplish tasks. Treats others fairly and professionally. Provides information and assistance to

others as requested/needed. Attempts to handle minor work-related disagreements in a positive manner.

Level II Descriptors

Problem Solving Factor: Applies well-developed knowledge and skills to effectively perform a full range of moderately complex clerical/assistant/support work. Work affects the quality and timeliness of products or services within the organization. Applies standard rules, procedures, or operations to accomplish a variety of tasks and resolve moderately complex matters. Supervisor defines objectives, priorities, and deadlines. Independently plans and carries out steps required to complete assignments. Resolves recurring problems/deviations without assistance. Completed work is reviewed for accuracy, timeliness, and compliance with established methods/procedures/guidelines. Takes initiative to identify, locate, and appropriately apply guidelines and procedures.

Communication Factor: Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important concepts and requirements, or recommend solutions. Also, communicates with counterparts at various levels both inside and outside the organization. Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision. Actively listens and appropriately responds to questions and concerns from others. Shows respect for others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.

Business Management Factor: Effectively interacts with customers to understand their needs, answer questions, and provide routine information about products and/or services. Supports execution of activities that advance the business-related goals of the organization. Takes initiative to develop innovative ideas for adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs. Develops effective plans and strategies for improving the effectiveness of important products or services for an identified mission support area. Successfully provides services with a high level of customer satisfaction. Identifies and advocates for resources necessary to support and contribute to mission requirements.

Teamwork and Leadership Factor: Contributes as a member of the team performing substantive clerical/assistant/support duties in support of the organizational mission. Assists in the development and training of individuals or team members. Participates in mentoring and assists with team management. Effectively carries out important mission support work. Leads/mentors/provides oversight to employees at same or lower level. Regularly assists specialists/managers on support issues due to depth of knowledge and breadth of expertise. Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Seeks opportunities to share relevant knowledge and information with others. May participate as a member on other teams.

Level III Descriptors

Problem Solving Factor: Performs clerical/assistant/support work involving application of an extensive body of rules, procedures, and operations to resolve a wide variety of complex organizational support activities. Work may occasionally have influence beyond immediate organization. Work has a direct impact on the effectiveness and efficiency of the work products and services of specialists within the organization. Applies considerable knowledge of the rules, procedures, and operations to accomplish a variety of tasks within the assigned area of responsibility. Applies guidelines and techniques to resolve complex problems involving related, procedural processes. Supervisor defines overall objectives, priorities, and deadlines. Works independently, resolving difficult problems that may arise. Completed work is reviewed for accuracy and compliance with established methods/procedures. Selects, interprets, and applies guidelines which are available but not completely applicable or have gaps in specificity. Uses considerable judgment by applying modified or new guidelines to resolve unique problems. May assist in the development of new guidelines for administrative procedures.

Communication Factor: Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with individuals in other agencies, departments, or public office. Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically accepted without revision. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints and clearly responds to questions or requests, following up to ensure understanding. Tailors communications to ensure an effective level of understanding.

Business Management Factor: Serves as a central point of contact to provide authoritative explanations of requirements, regulations, and procedures, and to effectively resolve problems or disagreements affecting assigned areas. Contributes to refinement of the business-related goals of the organization. Establishes successful working relationships with customers to address and resolve complex and/or controversial mission support issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction. Develops and implements effective plans and strategies for improving important products or services involving a broad mission support area. Successfully provides services with a high level of customer awareness and satisfaction. Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.

Teamwork and Leadership Factor: Effectively seeks out and capitalizes on opportunities to assist specialists/managers in achieving significant results that support organizational goals. Is sought out for consultation. Accomplishes and/or guides the critical aspects of mission support efforts with focus on accountability, quality, and effectiveness. Assists in development of guidelines and processes that affect mission performance. Leads and/or provides oversight for integrated mission support services. Regularly consulted by others on significant issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams. May recommend selection of staff or team members. Initiates development and training of subordinates. Participates in mentoring and position/performance management. Develops others through mentoring, coaching, and instruction.

Level IV Descriptors

Problem Solving Factor: Applies expert-level knowledge and skills to effectively perform a wide-range of highly complex organizational support activities. Work often has influence

beyond immediate organization. Work has a direct and significant impact on the effectiveness and efficiency of the work products and services of specialists and management officials within the organization. Typically leads other mission support personnel in defining and carrying out overall organizational support objectives. Develops guidelines, techniques, procedures, and/or operations for the most complex and difficult problems within the subject matter area for the organization. Operates with a great deal of independence. Plans and carries out assignments such that overall program objectives are met. Recommendations are generally accepted as technically authoritative. Work is evaluated only for conformance with broad objectives and is almost always accepted without change. Applies considerable judgment and ingenuity to interpret existing policies/procedures and develop new guidelines and techniques that have a direct impact on specific programs/services within the organization.

Communication Factor: Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with high-ranking individuals in other agencies, departments, or public office. Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision. Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to a range of audiences in a manner that facilitates understanding.

Business Management Factor: Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of mission support activities. Assists in the definition and improvement of processes that affect the business goals of the organization. Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Establishes innovative and useful approaches for evaluating and improving mission support operations, processes, and/or activities resulting in highly valued services that improve overall customer satisfaction. Takes initiative to develop and implement techniques for new or modified methods, approaches, or procedures for substantive mission support functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services. Identifies, acquires, defends, and manages the resources needed to accomplish duties directly supporting organizational goals. Balances competing resource requirements to ensure alignment with mission objectives.

Teamwork and Leadership Factor: Recognized as a significant contributor within a key mission support area by serving as a leader of a productive team or a leader in the conception and formulation of relevant concepts and ideas. Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant mission support issues. Contributes to achieving organizational goals by building flexible and effective partnerships. Manages the most sensitive conflicts in a positive manner. Actively works to foster collaboration by serving as a leadership resource. Selects or recommends selection of staff, team members, and subordinate supervisors. Formal supervisors in this broadband conduct performance evaluation/rating of subordinates. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops others through motivation, mentoring, coaching, and instruction.

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APPENDIX C. DESCRIPTORS SORTED BY CAREER PATH, FACTOR, AND BROADBAND LEVEL

SCIENTISTS AND ENGINEERS CAREER PATH, PAY PLAN DR

KEY ELEMENTS	DR PROBLEM SOLVING FACTOR			
	DR I	DR II	DR III	DR IV
Scope/ Depth/ Breadth	Applies knowledge of science, technology, or processes to assigned tasks. Efforts are within the technology area or own organization.	Develops or modifies new methods, approaches, or scientific knowledge to solve challenges. Efforts involve multiple technology areas or organizations.	Performs duties across a broad range of activities that require substantial depth of analysis and expertise. Implements or recommends decisions which impact science or technology.	Defines, leads, and manages an overall technology area which includes multidisciplinary science and technology (S&T) and/or non-S&T aspects. Makes critical decisions which significantly impact science or technology.
Complexity	Analyzes and resolves routine to moderately-difficult problems within assigned area, often under the guidance of senior personnel. Develops limited variations to established methods and/or techniques.	Applies knowledge of science/technology to analyze and resolve multifaceted issues/problems with minimal guidance. Develops comprehensive modifications to established methods and/or techniques.	Applies and expands knowledge of science/technology to resolve critical, multifaceted problems and/or develops new theories or methods. Adapts to tasks involving changes or competing requirements.	Applies considerable judgment to resolve critical, multifaceted problems spanning multiple disciplines. Expertly accomplishes tasks or resolves issues involving significant uncertainties, changes, or competing requirements.
Creativity	Uses judgment in selecting, interpreting, and adapting known scientific principles. Considers existing approaches and researches novel alternatives.	Uses judgment and originality in developing innovative approaches to define and resolve highly complex situations. Approaches to solving problems require initiative and resourcefulness in interpreting and applying scientific principles that are applicable but may be conflicting or not clearly understood.	Uses judgment and ingenuity in making decisions/developing technologies for areas with substantial uncertainty in methodology, interpretation, and/or evaluation. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles.	Using broadly stated organizational goals, fosters a culture which rewards ingenuity and generates/implements innovative ideas for developing new technologies. Develops innovative approaches which significantly expand the scientific knowledge base and/or the overall effectiveness of the organization.
Relevance and Recognition	Efficiently provides solutions that resolve assigned problems with some oversight/assistance from senior personnel. Completed work is reviewed for soundness, appropriateness, and conformity. Capability is recognized within own organization.	Consults appropriately to develop objectives, priorities, and deadlines. Plans and carries out work that is well aligned with organizational goals. Completed work is generally accepted upon review. Expertise is recognized internally and externally by academia, industry, or government peers.	Actively engages organizational planning activities. Defines and leads work efforts that are focused on organizational priorities. Results of work are considered authoritative. Expertise is recognized at the national level across the Laboratory, service, DoD agencies, industry, and/or academia.	Sets objectives and plans, designs, and directs work to meet evolving organizational goals. Agency provides only broadly defined missions and functions. Leadership is recognized at the national/international level across various laboratories, services, DoD, industry and/or academia.

KEY ELEMENTS	DR COMMUNICATION FACTOR			
	DR I	DR II	DR III	DR IV
Level/ Breadth	Prepares information to use within own organization and technical area. Exchanges information with other functional areas or external contacts.	Provides information to peers, senior technical leaders, and/or managers within and beyond own organization to influence decisions or recommend solutions. Exchanges information with established internal/external networks.	Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders. Collaborates with broad functional and technical areas.	Communicates with a wide range of peers/organizations across multiple levels inside and outside the Laboratory to influence major technical, programmatic, and/or management activities. Builds collaborative relationships across broad functional and technical areas and engages with leaders at the national and/or international level.
Written	Documents routine information in a clear and timely manner. Effectively utilizes communications tools to contribute to reports, documents, presentations, etc.	Documents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Authors reports, documents, and presentations pertaining to area(s) of expertise.	Leads documentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports, documents, and presentations pertaining to multiple areas of expertise.	Promotes a culture of excellence in synthesizing and documenting diverse and highly complex information, concepts, and ideas. Authors and directs authoritative reports, documents, and presentations integrating multiple disciplines.
Oral	Presents routine information in a clear and timely manner. Actively listens and responds appropriately. Develops speaking skills for basic briefings and effectively adjusts to the audience with guidance.	Presents complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Actively listens to others' questions, ideas, and concerns and considers diverse viewpoints. Demonstrates effective speaking skills for advanced briefings, tailoring presentations to facilitate understanding.	Leads presentation of diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Seeks opinions and ideas from others and carefully considers and incorporates diverse viewpoints. Demonstrates expert speaking skills and adaptability for critical briefings.	Develops strategies to improve presentations of diverse and highly complex information, concepts, and ideas. Fosters an atmosphere of respect for others at all levels and promotes expression of alternative viewpoints. Displays mastery of speaking skills and delivers compelling, authoritative briefings.
Review/ Oversight	Provides reports, documents, and presentations to senior personnel for review. Makes necessary revisions per guidance from senior personnel.	Reviews own communication products prior to submittal to peers, senior technical leaders, managers, and/or external contacts, resulting in minimal revision. May assist with the communications of others.	Produces required forms of communication with minimal guidance from others. Reviews communications of others for appropriate and accurate content.	Establishes guidance and oversight requirements for communication in their organizational or technical area. Responsible and accountable for overall development of reports, documents, and presentations of self and others within area of responsibility.

KEY ELEMENTS	DR TECHNOLOGY MANAGEMENT FACTOR			
	DR I	DR II	DR III	DR IV
Level/Scope/ Complexity	Interacts within technical area on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of technical goals within own organization.	Collaborates with technical area stakeholders to develop strategies for effective execution within a particular technology area. Executes activities within and beyond own organization that ensure the technology mission.	Leads technology partners in highly complex technical areas to develop strategies for research and development programs. Leads development and execution at a broad level in the Laboratory to advance the technology mission.	Integrates wide-ranging activities at a national/international level, involving multiple technical areas, to develop strategic technology solutions. Directs program/process formulation and implementation to achieve the mission goals at the Laboratory/multi-agency level.
Opportunities/ Entrepreneurism/ Planning	Participates in technology area planning within own organization. Contributes technical ideas to proposal preparation and new technology development.	Recognizes opportunities and formulates plans within own organization. Generates key ideas and contributes technically to proposal preparation and marketing to establish new business opportunities. Identifies and advocates for resources necessary to support and contribute to mission requirements.	Leads/contributes significantly to program definition and/or planning. Pursues near-term business opportunities by exploiting internal and/or external resources. Identifies and develops mission relevant solutions while leveraging collaborations across the Laboratory.	Leads requirements generation, strategic planning, and prioritization. Creates business opportunities based upon market awareness and exploitation of internal and/or external resources. Identifies, proposes and develops diverse and timely mission relevant solutions while leveraging national/international collaborations.
Resource Stewardship	Efficiently performs tasks utilizing available resources, including one's own time, to successfully accomplish assigned work. Provides inputs to risk management and process improvements.	Demonstrates knowledge of corporate processes by effective application of resources. Actively manages cost, schedule, and resource risks, seeking timely remedies. Engages others in using resources more efficiently and suggests innovative ideas to optimize available resources.	Monitors evolution of cost, schedule, and resource risk. Anticipates changes in resource requirements and develops and advocates solutions in advance. Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources.	Manages and defends the resources needed to achieve organizational goals and expertly guides the implementation of these resources in a dynamic environment. Leads, promotes, and enables process improvements to maximize resource utilization.
Technology Exploitation/ Transition	Contributes within own organization to the development and transition of technology solutions. Seeks out and uses relevant outside technologies to support own technical and functional activities.	Implements the development and transition/transfer of technology solutions, within or beyond own organization, based upon awareness of customer requirements. Evaluates and incorporates appropriate outside technology to support research and development.	Leads development and transition/transfer activities based upon extensive customer interactions and appropriate partnerships. Develops technology solutions by exploiting external technology to enhance research and development.	Leads world class research and development programs based upon anticipating customer requirements and leveraging national/international activities. Develops innovative solutions that exploit emerging technology and fosters an environment of technology exploitation.

KEY ELEMENTS	DR TEAMWORK AND LEADERSHIP FACTOR			
	DR I	DR II	DR III	DR IV
Level/Scope/ Breadth of Influence	Performs work within a team that improves capability of a technology area or organization. Coordinates actions and gains understanding of other areas sufficiently to make appropriate recommendations.	Performs work as a key team member or leads others to improve capability of a technology area or organization. Integrates efforts or works across disciplines. Provides consultation on complex issues.	Leads critical aspects of team or technology area with focused accountability for quality and effectiveness. Integrates efforts across disciplines. Sought out for consultation on complex issues that affect internal/external organizations and/or relationships.	Leads/manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization. Has broad and substantial impact on organizational decisions affecting internal/external organizations and/or relationships.
Teaming and Collaboration	As team member, makes positive contributions in assigned areas to meet team goals. Shares relevant knowledge and information with others. Develops positive working relationships with peers and superiors alike.	As lead or key team member, makes significant contributions to meet team goals in support of the organizational goals. Works collaboratively with others in a dynamic environment, demonstrating respect for other people and alternative viewpoints. Recognizes when others need assistance and provides support.	Effectively seeks out and capitalizes on opportunities for collaboration to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams.	Cultivates and sustains a professional environment of cooperation, cohesion and teamwork. Formulates short- and long-term teaming/collaboration strategies across organizations/disciplines. Establishes team charters. Builds coalitions to establish integrated approaches that meet overall organizational mission requirements.
Mentoring and Development	Maintains currency in area of expertise. Actively seeks guidance/opportunities to improve/expand skills.	Assists in the development and training of internal/external team members. Works to develop/improve self in order to more effectively accomplish team goals. May recommend selection of team members.	Leads and supports the development and training of subordinates and/or internal/external team members. Actively seeks out mentoring opportunities. Proactively develops/improves self in order to more effectively accomplish organizational goals. Recommends selection and/or selects team members.	Mentors and develops future organizational leaders and personnel through evaluations/feedback. Fosters a culture that encourages and rewards mentoring and development. Proactively develops/improves self in order to more effectively accomplish agency goals. Identifies and addresses skill deficiencies and selects team members.
Oversight Required/ Provided	Receives close guidance from others. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures.	Receives general guidance in terms of established policies, objectives, and decisions from others. Discusses novel concepts and significant departures from previous practices with supervisor or team leader.	Receives only broad policy/guidance. Provides guidance/direction to others. May participate in position and performance management.	Works within the framework of agency policies, mission objectives, and time and funding limitations with minimal oversight. Establishes policy and/or provides guidance/direction to others. Responsible for position and performance management.

BUSINESS MANAGEMENT AND PROFESSIONAL CAREER PATH, PAY PLAN DO

KEY ELEMENTS	DO PROBLEM SOLVING FACTOR			
	DO I	DO II	DO III	DO IV
Scope/Impact	Applies knowledge of business management or a professional field to perform duties supporting and/or improving the efficiency and productivity of the organization.	Develops new methods, criteria, policies, or precedents for business management or a professional field. Modifies or adapts established methods and approaches to complex issues that affect a wide range of organizational activities. May administer one or more complex programs within a functional area.	Performs duties across a broad range of activities that require substantial depth of analysis and organizational problem solving skills. Implements or recommends decisions which significantly impact agency policies/programs.	Defines, leads, and manages an overall business management or professional program area which includes a full range of complex functional areas. Makes critical decisions which significantly change, interpret, or develop important agency policies/programs.
Complexity	Analyzes and resolves difficult but routine problems within assigned area of responsibility, sometimes under the guidance of a senior specialist. Includes minor adaptation to established methods and techniques.	Applies substantial knowledge of business management or a professional field to analyze and resolve highly complex issues and problems. Includes refinement of methods or development of new ones.	Resolves critical problems or develops new theories for work products or services which affect the work of other experts, the development of major aspects of business management programs or missions, or impacts a large number of people. Assignments involve continual program changes or conflicting requirements.	Applies considerable judgment and ingenuity to interpret existing guidelines and develop policies and procedures for broadly based projects/programs.
Independence	Plans and carries out work based on established guidelines and supervisor's stated priorities and deadlines. Completed work is evaluated for soundness, appropriateness, and conformity to policy and requirements.	Consults with supervisor to develop deadlines, priorities, and objectives. Plans and carries out work, effectively resolving most conflicts that arise. Keeps supervisor informed of potentially controversial issues. Completed work is reviewed primarily for meeting requirements and producing expected results.	Supervisor outlines general objectives. Independently plans and carries out the work. Complex issues are resolved without reference to supervisor except for matters of a policy nature. Results are considered technically authoritative and are normally accepted without significant change.	Independently plans, designs, and carries out programs, projects, studies, etc., such that overall program objectives are met. Supervisor provides only broadly defined missions and functions. Results of work are considered technically authoritative and are almost always accepted without change.
Creativity	Uses judgment in selecting, interpreting, and adapting guidelines that are readily available.	Uses initiative and resourcefulness in interpreting and applying policies, precedents, and guidelines that are applicable but may be conflicting or stated only in general terms. Uses considerable judgment and originality in developing innovative approaches to define and resolve highly complex situations.	Uses judgment and ingenuity in making decisions in major areas of uncertainty in methodology, interpretation and/or evaluation. Guidelines require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, criteria, or propose new policies.	Guidelines are broadly stated and non-specific. Generates/implements innovative ideas for increasing overall effectiveness of the organization.

KEY ELEMENTS	DO COMMUNICATION FACTOR			
	DO I	DO II	DO III	DO IV
Level of Influence	Factual information and material is normally presented to individuals within immediate office or within own organization, but may involve external contacts.	Communicates important concepts to influence decisions or recommend solutions with specialists and management officials in own organization. Occasionally communicates with individuals at higher levels and in other organizations.	Influences consensus among management officials within AFRL, AF, and in other agencies and organizations to accept ideas and implement recommendations designed to improve effectiveness of major programs and policies.	Interacts with high-ranking officials to include AF level, other agencies, and departments to influence major program policies and/or defend controversial decisions. May also communicate with leaders at the local, state, and/or national levels for similar purposes.
Written	Communicates routine information in a clear and timely manner. Develops formal written communication often with supervisory review and revision.	Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision.	Communicates complex information, concepts, and ideas in an accurate, clear, concise, well-organized, and timely manner. Written communication typically accepted without revision.	Tailors style to communicate critical information effectively to diverse audiences at different levels. Accurately communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision.
Oral	Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to the audience's level of understanding. Has speaking skills required to deliver basic briefings.	Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints and appropriately responds to questions or requests. Effectively adjusts communications to facilitate understanding. Tailors presentations and briefings to meet an audience's needs and level of understanding.	Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses tone that respects and carefully considers diverse viewpoints, responding appropriately. Clearly communicates complex information, concepts, and ideas through briefings and presentations to a wide range of audiences.	Receptive to alternative viewpoints. Clearly communicates complex information and ideas to a range of audiences. Shows respect for others and responds appropriately to people at all levels. Delivers compelling policy level briefings.

KEY ELEMENTS	DO BUSINESS MANAGEMENT FACTOR			
	DO I	DO II	DO III	DO IV
Level and Purpose	Interacts with customers on routine issues to communicate information and coordinate actions within area of assigned responsibility. Conducts duties in support of business goals of the organization.	Works with customers to define/anticipate problems and develop strategies for effective resolution within a particular program area. Supports execution of activities that advance the business-related goals of the organization.	Works jointly with customers to identify highly complex, sensitive, or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization.	Interacts at senior management levels to negotiate and resolve conflicts concerning activity-wide policies and programs. Resolutions are communicated across the organization/agency. Contributes to the definition and improvement of processes that affect the business goals of the organization.
Customer Relations	Provides timely, flexible, and responsive products and/or services to customers under guidance of senior specialist or supervisor.	Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs.	Establishes successful working relationships with customers to address and resolve highly complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction.	Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for improving or expanding products and/or services, resulting in highly valued services that improve overall customer satisfaction.
Effectiveness	Contributes ideas for improvement of established services based on knowledge of a variety of business management or professional programs and systems, and an understanding of customer needs.	Contributes key ideas and/or strategies to develop, implement, and promote new/improved programs or services applicable to business management or a professional field.	Develops effective plans and strategies for highly complex programs or services involving broad business management or a professional field. Successfully carries out and maintains such programs/services at a high level of customer awareness and satisfaction.	Generates strategic plans and objectives to develop, implement, and promote broadly-based programs and services to meet organizational needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services.
Resource Management	Demonstrates knowledge of available resources and the process for acquiring the resources needed to accomplish assigned work. Makes effective use of available resources including one's own time.	Identifies and advocates for resources necessary to support and contribute to mission requirements. Maximizes use of available resources.	Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.	Identifies, acquires, defends, and manages the resources needed to achieve organizational goals.

KEY ELEMENTS	DO TEAMWORK AND LEADERSHIP FACTOR			
	DO I	DO II	DO III	DO IV
Team Role	Makes positive contributions to all aspects of the overall team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities.	Contributes as lead or key member of the team performing the substantive analytical or professional duties in support of the organizational mission.	Effectively seeks out and capitalizes on opportunities for the work unit to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles.	Formulates short- and long-term strategies across subordinate units to achieve significant results in support of the organization's goals and long-term vision.
Breadth of Influence	Performs work that affects the accuracy, reliability, or acceptability of broader projects and programs. Coordinates joint actions and gains understanding of other areas sufficient to make appropriate recommendations.	Effectively carries out integrated advisory and program work. Leads/mentors/provides oversight to specialists at same or lower level. Regularly consulted by management officials on complex issues due to depth and breadth of expertise.	Guides the critical aspects of programmatic and business management efforts of individuals and/or teams with focus on accountability, quality, and effectiveness. Has impact on business recommendations that affect both internal and external relationships.	Leads and manages all aspects of subordinate/team efforts with complete accountability for mission and program success. Utilizes situational awareness to promote competitive positioning of the organization.
Cooperation	Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. May participate as a member of cross-functional teams.	Works collaboratively and flexibly with others to accomplish team goals. Treats others fairly and professionally. Shares relevant knowledge and information with others. Recognizes when others need assistance and provides support. May participate as a member of cross-functional/integrated teams.	Leads and provides oversight to effectively manage integrated advisory and program services. Regularly consulted by management officials on highly complex issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams.	Builds coalitions to establish integrated approaches to meet overall organizational mission requirements. Sets and maintains a tone of cooperation, cohesion, and teamwork. Champions respect and value for others.
Supervision and Subordinate Development	May select or recommend selection of staff or team members.	Selects or recommends selection of staff or team members. Supports development and training of subordinates. Participates in mentoring and position/performance management.	Selects or recommends selection of staff, team members, and/or subordinate supervisors. Initiates development and training of subordinates. Participates in mentoring, motivation, coaching, instruction, and position/performance management.	Selects or recommends selection of staff, team members, and subordinate supervisors. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops future team leaders and supervisors.

TECHNICIAN CAREER PATH, PAY PLAN DX

KEY ELEMENTS	DX PROBLEM SOLVING FACTOR			
	DX I	DX II	DX III	DX IV
Scope/Impact	Applies basic knowledge to perform well-defined work activities with guidance. Performs specific procedures which are typically a segment of a project of broader scope. Work products affect the accuracy, reliability, or acceptability of further procedures, processes, or services.	Plans and conducts work which is a complete project of relatively limited scope or a portion of a large and more diverse project. Work affects the operation of systems, equipment, testing operations, research conclusions, or similar activities.	Establishes criteria, formulates projects, assesses program effectiveness, and investigates a variety of unusual conditions or problems in areas which affect a wide range of major activities. Identifies areas for investigation or improvement. Work affects the design of systems, equipment, testing operations, research conclusions, or similar activities.	Provides expert advisory services and leadership for broad and complex programs, systems, and processes that advance the state of the art. Plans, organizes, and/or directs extensive development efforts associated with the latest advancements in technology.
Complexity	Performs duties that involve related and established steps, processes or methods. Operates and adjusts varied equipment and instrumentation to perform standardized tests or operations involved in testing, data analysis, and presentation.	Applies practical knowledge of different but established technical methods, principles, and practices within a narrow area to design, plan, and carry out projects. Assignments require study, analysis, and consideration and selection of several possible courses of action.	Applies considerable knowledge of a wide range of technical methods, principles, and practices to design, plan, and carry out complex projects. Assignments are frequently complicated by many operations which equipment or systems must perform, and many variables that must be considered. Precedents are sometimes absent or obscure. Handles conflicting issues.	Projects are multi-disciplinary and are greatly affected by advances in technology. Projects are also characterized by highly complex problems for which precedents are lacking. Uses judgment and ingenuity to convert objectives into programs or policies. Adjusts broad activities to align with changing program needs.
Independence	Executes routine assignments without explicit instructions if standard work methods can be used. Resolves recurring routine problems with little supervision.	Supervisor outlines overall requirements, providing general instructions regarding objectives, time limitations, and priorities. Plans and carries out successive steps and handles problems in accordance with accepted practices or instructions. Completed work is evaluated for technical soundness, appropriateness, and conformity.	Supervisor outlines general requirements and objectives. Analyzes problems and develops approaches/work plans. Requires little to no technical advice or guidance. Technical decisions and recommendations are normally accepted by higher authority.	Supervisor outlines only broad policy and operational objectives/requirements. Technical supervision is limited to reviewing broad hypotheses and overall approach. Interpretations are generally accepted as technically authoritative.
Creativity	Uses judgment in locating and selecting the most appropriate procedures, making minor deviations to adapt the guidelines to specific cases.	Applies knowledge and experience to a broad range of assignments. Seeks novel solutions where appropriate. Adapts previous plans/techniques to fit new situations.	Applies extensive knowledge to unusual or highly difficult assignments. Reviews, analyzes, and integrates work performed by others along with adaptations from changes in technology as they relate to the possible impact on projects, systems or processes.	Creates new techniques, establishing criteria and/or developing new information. Approach is not easily determined and novel approaches or considerable modification of existing techniques is required. May contribute to or publish technical papers on modification of existing theories or technology.

KEY ELEMENTS	DX COMMUNICATION FACTOR			
	DX I	DX II	DX III	DX IV
Level of Influence	Acquires or exchanges information with individuals on same team or within own organization for routine and recurring issues. May involve limited external contacts.	Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important technical concepts and requirements or recommend solutions. Also, communicates with various individuals at higher levels and in other organizations.	Communicates with employees and management officials both within own organization and in organizations outside the agency to resolve problems, accept ideas, and implement recommendations designed to improve effectiveness of operating systems, programs, equipment, or services.	Interacts with individuals or groups in various agencies and departments to influence and/or defend controversial decisions.
Written	Communicates routine information in a clear and timely manner. Written communication may require some revision.	Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision.	Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is typically accepted without revision.	Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision.
Oral	Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.	Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints. Tailors communications to ensure an effective level of understanding. Clearly responds to questions or requests, following up when appropriate.	Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to audiences in a manner that facilitates understanding. Clearly responds to questions or requests with follow up when appropriate.	Prepares and delivers briefings to communicate complex information and ideas to a range of audiences in a manner that facilitates understanding. Receptive to alternative or dissenting viewpoints. Shows respect for others and responds appropriately to people at all levels.

KEY ELEMENTS	DX BUSINESS MANAGEMENT FACTOR			
	DX I	DX II	DX III	DX IV
Level and Purpose	Interacts with customers to communicate information and coordinate routine actions within area of assigned responsibility. Conducts duties in support of business goals of the organization.	Works with customers to define/anticipate problems and develop strategies for effective resolution within technical areas. Supports execution of activities that advance the business-related goals of the organization.	Works with customers to identify highly complex or controversial problems and develop strategies for effective resolution. Contributes to refinement of the business-related goals of the organization.	Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of activities. Contributes to the definition and improvement of processes that affect the business goals of the organization.
Customer Relations	Provides timely, flexible, and responsive products, and/or services to customers under guidance of senior technician or supervisor.	Develops innovative or useful suggestions for designing and adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs.	Establishes successful working relationships with customers to address and resolve highly complex and/or controversial issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction.	Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Develops innovative and useful approaches for evaluating and improving operations, equipment, and/or activities resulting in highly valued services that improve overall customer satisfaction.
Effectiveness	Contributes ideas for improvement of products and services to project lead/supervisor based on an understanding of customer needs.	Contributes key ideas and/or strategies to develop, implement, and apply new/improved methods and procedures applicable to technical areas.	Develops effective plans and strategies for highly complex products or services involving a broad technical area. Successfully carries out and maintains services at a high level of customer awareness and satisfaction.	Stays appraised of current technologies and methods to develop techniques for new or modified work methods, approaches, or procedures, for substantive functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services.
Resource Management	Efficiently utilizes available resources, including one's own time, to successfully accomplish assigned work.	Anticipates, identifies, and advocates for resources necessary to support and contribute to mission requirements. Maximizes use of available resources.	Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.	Plans and allocates resources to accomplish multiple customer needs simultaneously across the organization. Develops and implements innovative approaches to attain goals and minimize resource expenditures.

KEY ELEMENTS	DX TEAMWORK AND LEADERSHIP FACTOR			
	DX I	DX II	DX III	DX IV
Team Role	Makes positive contributions to specific aspects of the team's responsibilities. Actively takes initiative to expand knowledge and assume more responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities.	Makes positive contributions to multiple aspects of the team's responsibilities. Shares knowledge and experience with team members.	Is sought out for consultation and serves as a mentor to other team members. Seeks out opportunities to share experience and lessons learned with other team members, both internal and external to own organization.	Recognized as a prominent contributor to key technical fields as a leader of a productive team directly contributing to the organization's mission. Considered a leader in the conception and formulation of innovative concepts and ideas.
Breadth of Influence	Provides work product that is a complete project of relatively conventional and limited scope or a portion of a larger project. Work requires a limited degree of coordination and integration of diverse phases carried out by others.	Provides work product that is a complete conventional project, or a portion of a larger, more diverse project. Projects require coordination of several independent parts, each requiring independent analysis and solution.	Manages highly difficult assignments in functional areas. Acts as a spokesperson authorizing important modifications which conform to broad policy. Coordinates assignments with subject matter experts in other areas. Reviews, analyzes, and integrates work performed by other groups or individuals outside the organization.	Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant technical issues. Responsible for ensuring team composition is sufficient to meet program objectives.
Cooperation	Personal interactions foster cooperation and teamwork. Works effectively with others to accomplish tasks. Treats others respectfully and professionally. Provides information and assistance to others as needed. Attempts to handle minor work-related disagreements in a positive manner.	Works collaboratively and flexibly with others to accomplish team goals. Treats others respectfully and professionally. Shares relevant knowledge and information with others. Effectively contributes as a participating member on other teams.	Builds effective partnerships across units. Volunteers and actively serves in leadership roles on integrated teams. Regularly consulted by others on significant issues. Deals with challenging conflicts in a manner that motivates and encourages cooperation. Develops options to resolve disagreements that may require resolution at a higher level.	Contributes to achieving organizational goals by building flexible and effective partnerships. Successfully resolves sensitive conflicts. Actively works to ensure the continuous transfer of knowledge and skills throughout the work unit by serving as a technical resource and initiating or overseeing the development of formal knowledge sharing systems.
Supervision and Subordinate Development	N/A	Supports development and training of subordinates and/or co-workers. Participates in mentoring and position / performance management.	Provides recommendations for creation of teams. Develops and identifies new training needs for the professional growth of team members. Provides mentoring and position/performance management.	Selects or recommends selection of staff and/or team members. Develops and identifies new training needs for the professional growth of subordinates. Directs and provides mentoring and position/performance management. May formally supervise at team-level.

MISSION SUPPORT CAREER PATH, PAY PLAN DU

KEY ELEMENTS	DU PROBLEM SOLVING FACTOR			
	DU I	DU II	DU III	DU IV
Scope/Impact	Performs clerical/assistant/support work involving the application of a body of standardized rules, procedures, or operations to resolve a variety of standard, recurring requirements. Work affects the quality and timeliness of products or services within the immediate office.	Applies well-developed knowledge and skills to effectively perform a full range of moderately complex clerical/assistant/support work. Work affects the quality and timeliness of products or services within the organization.	Performs clerical/assistant/support work involving application of an extensive body of rules, procedures, and operations to resolve a wide variety of complex organizational support activities. Work may occasionally have influence beyond immediate organization. Work has a direct impact on the effectiveness and efficiency of the work products and services of specialists within the organization.	Applies expert-level knowledge and skills to effectively perform a wide-range of highly complex organizational support activities. Work often has influence beyond immediate organization. Work has a direct and significant impact on the effectiveness and efficiency of the work products and services of specialists and management officials within the organization. Typically leads other mission support personnel in defining and carrying out overall organizational support objectives.
Complexity	Applies standard rules, procedures, or operations to accomplish repetitive tasks and resolve routine matters.	Applies standard rules, procedures, or operations to accomplish a variety of tasks and resolve moderately complex matters.	Applies considerable knowledge of the rules, procedures, and operations to accomplish a variety of tasks within the assigned area of responsibility. Applies guidelines and techniques to resolve complex problems involving related, procedural processes.	Develops guidelines, techniques, procedures, and/or operations for the most complex and difficult problems within the subject matter area for the organization.
Independence	Carries out recurring and routine work, following supervisor's direction regarding work to be done, priorities, and specific procedures/guidelines to be followed. Completed work is reviewed for accuracy, timeliness, and adherence to instructions.	Supervisor defines objectives, priorities, and deadlines. Independently plans and carries out steps required to complete assignments. Resolves recurring problems/deviations without assistance. Completed work is reviewed for accuracy, timeliness, and compliance with established methods/procedures/guidelines.	Supervisor defines overall objectives, priorities, and deadlines. Works independently, resolving difficult problems that may arise. Completed work is reviewed for accuracy and compliance with established methods/procedures.	Operates with a great deal of independence. Plans and carries out assignments such that overall program objectives are met. Recommendations are generally accepted as technically authoritative. Work is evaluated only for conformance with broad objectives and is almost always accepted without change.
Creativity	Uses judgment in selecting and applying guidelines which are readily available.	Takes initiative to identify, locate, and appropriately apply guidelines and procedures.	Selects, interprets, and applies guidelines which are available but not completely applicable or have gaps in specificity. Uses considerable judgment by applying modified or new guidelines to resolve unique problems. May assist in the development of new guidelines for administrative procedures.	Applies considerable judgment and ingenuity to interpret existing policies/procedures and develop new guidelines and techniques that have a direct impact on specific programs/services within the organization.

KEY ELEMENTS	DU COMMUNICATION FACTOR			
	DU I	DU II	DU III	DU IV
Level of Influence	Communicates with individuals primarily in own organization in order to exchange information and present findings.	Communicates with co-workers and management officials in own organization in order to plan and coordinate work, communicate important concepts and requirements, or recommend solutions. Also, communicates with counterparts at various levels both inside and outside the organization.	Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with individuals in other agencies/departments or public office.	Routine contacts are with co-workers, managers in organizations for which services are performed, and staff at higher echelons to coordinate work, communicate important concepts and requirements, or recommend solutions. May also interact with high-ranking individuals in other agencies, departments, or public office.
Written	Communicates routine information in a clear and timely manner. Written communication may require some revision.	Communicates information in a clear, concise, well-organized, and timely manner. Written communication typically requires minimal revision.	Communicates moderately complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication typically accepted without revision.	Tailors style to communicate critical information effectively to diverse audiences at different levels. Communicates complex information, concepts, and ideas in a clear, concise, well-organized, and timely manner. Written communication is accepted without revision.
Oral	Clearly communicates status of assigned tasks. Actively listens and appropriately responds to questions and concerns from others. Uses tone that respects others' ideas, comments, and questions.	Actively listens and appropriately responds to questions and concerns from others. Shows respect for others' ideas, comments, and questions. With guidance, effectively adjusts communications to facilitate understanding.	Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints and clearly responds to questions or requests, following up to ensure understanding. Tailors communications to ensure an effective level of understanding.	Seeks opinions and ideas from others as appropriate. Actively listens to others' questions, ideas, and concerns. Uses respectful tone that considers diverse viewpoints, responding appropriately. Communicates complex information, concepts, and ideas through briefings or presentations to a range of audiences in a manner that facilitates understanding.

KEY ELEMENTS	DU BUSINESS MANAGEMENT FACTOR			
	DU I	DU II	DU III	DU IV
Level and Purpose	Interacts with customers on routine issues to communicate information and clarify instructions for tasking within area of assigned responsibility. Conducts administrative duties in support of business goals of the organization.	Effectively interacts with customers to understand their needs, answer questions, and provide routine information about products and/or services. Supports execution of activities that advance the business-related goals of the organization.	Serves as a central point of contact to provide authoritative explanations of requirements, regulations, and procedures, and to effectively resolve problems or disagreements affecting assigned areas. Contributes to refinement of the business-related goals of the organization.	Interacts at senior management levels to negotiate and resolve conflicts affecting a wide-range of mission support activities. Assists in the definition and improvement of processes that affect the business goals of the organization.
Customer Relations	Provides timely, flexible, and responsive products and/or services to customers under guidance of senior team member or supervisor.	Takes initiative to develop innovative ideas for adapting customer-focused products and/or services. Displays flexibility in responding to changing customer needs.	Establishes successful working relationships with customers to address and resolve complex and/or controversial mission support issues. Anticipates customer needs in order to avoid potential problems resulting in improved customer satisfaction.	Fosters successful working relationships with high-level officials both inside and outside the organization that help achieve overall mission goals. Establishes innovative and useful approaches for evaluating and improving mission support operations, processes, and/or activities resulting in highly valued services that improve overall customer satisfaction.
Effectiveness	Suggests ideas for improvement of products and services based on an understanding of customer needs.	Develops effective plans and strategies for improving the effectiveness of important products or services for an identified mission support area. Successfully provides services with a high level of customer satisfaction.	Develops and implements effective plans and strategies for improving important products or services involving a broad mission support area. Successfully provides services with a high level of customer awareness and satisfaction.	Takes initiative to develop and implement techniques for new or modified methods, approaches, or procedures for substantive mission support functions and services to meet organizational and customer needs. Ensures overall effectiveness and customer-oriented focus of managed programs, processes, and services.
Resource Management	Efficiently utilizes available resources to successfully accomplish assigned work. Appropriately prioritizes work; manages own time.	Identifies and advocates for resources necessary to support and contribute to mission requirements.	Anticipates changes in workload requirements and advocates for resources in advance of when they are needed. Actively assists others in using resources more efficiently and suggests innovative ideas to stretch limited resources.	Identifies, acquires, defends, and manages the resources needed to accomplish duties directly supporting organizational goals. Balances competing resource requirements to ensure alignment with mission objectives.

KEY ELEMENTS	DU TEAMWORK AND LEADERSHIP FACTOR			
	DU I	DU II	DU III	DU IV
Team Role	Contributes to specific aspects of the team's responsibilities. Pursues opportunities for training and professional growth. Actively participates in team training activities.	Contributes as a member of the team performing substantive clerical/assistant/support duties in support of the organizational mission. Assists in the development and training of individuals or team members. Participates in mentoring and assists with team management.	Effectively seeks out and capitalizes on opportunities to assist specialists/managers in achieving significant results that support organizational goals. Is sought out for consultation.	Recognized as a significant contributor within a key mission support area by serving as a leader of a productive team or a leader in the conception and formulation of relevant concepts and ideas.
Breadth of Influence	Provides work product or service of limited scope that requires a minimal degree of coordination and integration of work carried out by others.	Effectively carries out important mission support work. Leads/mentors/provides oversight to employees at same or lower level. Regularly assists specialists/managers on support issues due to depth of knowledge and breadth of expertise.	Accomplishes and/or guides the critical aspects of mission support efforts with focus on accountability, quality, and effectiveness. Assists in development of guidelines and processes that affect mission performance.	Serves as an expert in own field and is regularly sought out for consultation and/or takes leadership on important committees dealing with significant mission support issues.
Cooperation	Personal attitude/conduct fosters cooperation and teamwork needed to accomplish tasks. Treats others fairly and professionally. Provides information and assistance to others as requested/needed. Attempts to handle minor work-related disagreements in a positive manner.	Works flexibly with others to accomplish team goals. Treats others fairly and professionally. Seeks opportunities to share relevant knowledge and information with others. May participate as a member on other teams.	Leads and/or provides oversight for integrated mission support services. Regularly consulted by others on significant issues. Seeks out opportunities to share knowledge with others. Volunteers to lead or serve on cross-functional/integrated teams.	Contributes to achieving organizational goals by building flexible and effective partnerships. Manages the most sensitive conflicts in a positive manner. Actively works to foster collaboration by serving as a leadership resource.
Supervision and Subordinate Development	N/A	N/A	May recommend selection of staff or team members. Initiates development and training of subordinates. Participates in mentoring and position/performance management. Develops others through mentoring, coaching, and instruction.	Selects or recommends selection of staff, team members, and subordinate supervisors. Formal supervisors in this broadband conduct performance evaluation/rating of subordinates. Initiates development and training of subordinates. Directs or recommends mentoring and position/performance management. Develops others through motivation, mentoring, coaching, and instruction.

[FR Doc. 2010–21355 Filed 8–27–10; 8:45 am]

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Federal Register

Monday,
August 30, 2010

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0076, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–45; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–45. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–45 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–45

Item	Subject	FAR case	Analyst
I	Inflation Adjustment of Acquisition—Related Thresholds	2008–024	Jackson.
II	Definition of Cost or Pricing Data	2005–036	Chambers.
III	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Materials.	2009–008	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–45 amends the FAR as specified below:

Item I—Inflation Adjustment of Acquisition—Related Thresholds (FAR Case 2008–024)

This final rule amends the FAR to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010.

This is the second review of FAR acquisition-related thresholds. The Councils published a proposed rule in the **Federal Register** at 75 FR 5716, February 4, 2010.

The effect of the final rule on heavily-used thresholds is the same as stated in the preamble to the proposed rule:

- The micro-purchase base threshold of $3,000 (FAR 2.101) is not changed.
- The simplified acquisition threshold (FAR 2.101) is raised from $100,000 to $150,000.
- The FedBizOpps preaward and post-award notices (Part 5) remain at $25,000 because of trade agreements.
- Commercial items test program ceiling (FAR 13.500) is raised from $5,500,000 to $6,500,000.
- The cost or pricing data threshold (FAR 15.403–4) is raised from $650,000 to $700,000.
- The prime contractor subcontracting plan (FAR 19.702) floor is raised from $550,000 to $650,000, and the construction threshold of $1,000,000 increases to $1,500,000.

Item II—Definition of Cost or Pricing Data (FAR Case 2005–036)

This final rule amends the FAR by redefining "cost or pricing data," adding a definition of "certified cost or pricing data," and changing the term "information other than cost or pricing data," to "data other than certified cost or pricing data." The rule clarifies the existing authority for contracting officers to require certified cost or pricing data or data other than certified cost or pricing data, and the existing requirements for submission of the various types of pricing data. The rule is required to eliminate confusion and misunderstanding, especially regarding the authority of the contracting officer to request data other than certified cost or pricing data when there is no other means to determine that proposed prices are fair and reasonable. Most significantly, the rule clarifies that data other than certified cost or pricing data may include the identical types of data as certified cost or pricing data but without the certification. Because the rule clarifies existing requirements, it will have only minimal impact on the Government, offerors, and automated systems.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Materials (FAR Case 2009–008)

This final rule converts the interim rule published in the **Federal Register** at 74 FR 14623, March 31, 2009, to a final rule with changes. This final rule implements section 1605 of Division A of the American Recovery and Reinvestment Act (Recovery Act) of 2009. It prohibits the use of funds appropriated for or otherwise made available by the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605 mandates application of the Recovery Act Buy American requirement in a manner consistent with U.S. obligations under international agreements. Least developed countries continue to be treated as designated countries per congressional direction. Section 1605 also provides for waivers under certain limited circumstances.

Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisitions Policy (Defense Acquisition Regulations System).

Joseph A. Neurauter,

Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Sheryl J. Goddard,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2010–21024 Filed 8–27–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52

[FAC 2005–45; FAR Case 2008–024; Item I; Docket 2010–0079, Sequence 1]

RIN 9000–AL51

Federal Acquisition Regulation; Inflation Adjustment of Acquisition—Related Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010.

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

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–45, FAR case 2008–024.

SUPPLEMENTARY INFORMATION:

A. Background

The first review of acquisition-related thresholds to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) was conducted under FAR Case 2004–033 during FY 2005. The final rule for the first review was published in the **Federal Register** at 71 FR 57363, September 28, 2006. This is the second review of FAR acquisition-related thresholds. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 5716, February 4, 2010. The preamble to the proposed rule contained a detailed explanation of—

- What an acquisition-related threshold is;
- What acquisition-related thresholds are not subject to escalation adjustment under this case;
- How the Councils analyze statutory and nonstatutory acquisition-related thresholds; and
- The effect of this rule on the most heavily-used thresholds.

Eight respondents submitted comments on the proposed rule, which are addressed in the following section. The final rule has been coordinated with the Department of Labor and the Small Business Administration in areas of the regulation for which they are the lead agency. Any changes to Cost Accounting Standards thresholds will be dealt with under a separate case.

B. Analysis of Public Comments

1. Statutory Thresholds

a. All Statutory Thresholds

Comment: One respondent, while recognizing that this is a statutory requirement, believed that no inflation adjustments should be made at this time. The respondent views the threshold increases as a way to reduce Government oversight of Federal contracts and considers such reduction unwise, because of various congressional oversight hearings and reports of Inspectors General and the Government Accountability Office that have revealed "widespread systemic gaps in Government contracting oversight."

Response: As noted, this is a statutory requirement. Further, the intent is not to reduce Government oversight but to maintain the status quo, by adjusting thresholds to keep pace with inflation. If thresholds are not adjusted for inflation, the number of contracts subject to the acquisition-related threshold will continue to grow, because more and more contracts will be below the stated thresholds.

b. Prime Contractor Subcontracting Plan Thresholds (FAR 19.702)

Comment: One respondent stated that they were particularly pleased with the proposal to increase the threshold values in FAR part 19 relative to the need to submit an acceptable subcontracting plan. They consider the current threshold to be administratively burdensome. The respondent further recommended that the Councils should pursue legislative action to raise the threshold to a minimum of one million dollars.

Another respondent recommended increasing the prime contractor subcontracting plan threshold to $700,000, to be the same as the increased cost or pricing data threshold.

Response: The final rule raises the subcontracting threshold to $650,000, as required by the law that this case is implementing. Pursuing legislative changes is outside the scope of this case.

c. Miller Act (FAR 28.102 and 52.228–15)

Comment: Three respondents addressed the proposed increase in the Miller Act threshold. These respondents emphasized the importance of performance and payment bonds as a protection for subcontractors and taxpayers.

- One respondent stated that the law is "an unfortunate and contradictory statutory requirement." The respondent considered that the threshold increase will undermine the original protective purposes of the bonding requirements set forth in the Miller Act, because more Federal construction projects will be undertaken without the benefit of payment bond protection. In particular, this respondent noted that subcontractors are frequently small businesses, for whom lack of a payment bond may be disastrous. The respondent requested the Councils explain accurately to Congress the significant negative impact that such increases will have.
- Another respondent stated that the threshold increase is bad public policy, and the Councils should reconsider whether such thresholds are "acquisition-related thresholds" as contemplated by the Act.
- The third respondent urged the Councils not to increase the Miller Act surety bond threshold, but did not suggest rationale for noncompliance with the statutory requirement.

Response: The Councils do not agree that adjustment of thresholds for inflation will have the negative impact perceived by these respondents. As already stated, inflation adjustment of thresholds is a means of maintaining the status quo. It will not decrease the number of contracts that are subject to the Miller Act, but will prevent the relative number of contracts subject to the Miller Act from increasing. The rationale that there should be some level below which the Miller Act is not applicable is maintained by adjustment of the threshold for inflation. The law (40 U.S.C. 3132) provides alternate payment protection for contracts that exceed $30,000, so that contracts below the Miller Act threshold are not entirely without payment protection.

As to whether the Miller Act threshold is an acquisition-related threshold, this threshold clearly meets the definition that was set forth in the law, as consistently interpreted by the Councils since the enactment of the law in 2004. The law defines an acquisition-related threshold as a threshold that is set forth in law (the Miller Act), as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency. As this definition is applied to the Miller Act threshold, the Miller Act requires payment and performance bonds when agencies acquire construction that is valued at more than the Miller Act threshold (raised by this rule from $100,000 to $150,000).

2. Nonstatutory Thresholds

Comment: One respondent was particularly concerned about the proposed increase in nonstatutory thresholds. In particular, this respondent cited three examples of threshold increases which the respondent considered questionable:

- *Approval levels for limited source justifications at FAR 8.405–6.* The respondent stated that increasing such approval levels appears inconsistent with the President's March 4, 2009, Memorandum.
- *The threshold at FAR 22.1103 for use of the solicitation provision FAR 52.222–46, Evaluation of Compensation for Professional Employees.* The respondent stated that when contractors pay very low wages and benefits, work quality can suffer and the Government may bear hidden costs because of the need to provide income assistance to low income families.
- *The threshold for subcontracting plans governed by FAR 19.702.* The respondent stated that the increase of this threshold would have a detrimental impact, especially on small businesses.

Response: Although there is no statutory requirement to increase the nonstatutory thresholds, the same rationale applies as to why escalation to adjust for inflation is a good idea. If there was any rationale for the level at which the thresholds were originally put in place by policy, the thresholds will become further and further out of line with the original policy decision if they are left unchanged. In addition to this general rationale, the Councils add the following two particular responses:

- In particular, the approval levels for limited source justifications at FAR 8.405–6 were selected to be consistent with the statutory thresholds at FAR 6.304(a). Therefore, it is reasonable to escalate these thresholds the same as the thresholds at FAR 6.304(a) to maintain the consistency.
- Although the respondent cited the threshold for subcontracting plans governed by FAR 19.702 as an example of a nonstatutory threshold, this threshold is actually a statutory threshold (15 U.S.C. 637(d)(4)), which must therefore be escalated.

3. Increase Penalties

Comment: One respondent recommended that the Councils should also increase the maximum dollar amount of penalties when increasing the acquisition-related threshold contained in the same statute. According to the respondent, by not increasing the penalty for failure to disclose unallowable activities, the Councils are providing contractors a greater incentive to violate the law.

Response: The penalties are set by statute. The law that the FAR Council is implementing did not authorize the FAR Council to increase penalties, only the acquisition-related thresholds.

4. Implementation

Two Government employees provided comments relating to the implementation of the rule.

a. Provide a Matrix

Comment: One respondent requested a matrix of the changes in order to save everyone from having to do the analysis and matrix development. (Although the comment was submitted in response to the FAR rule, the respondent requested that the Councils provide a Defense Federal Acquisition Regulation Supplement (DFARS) matrix, so this may have been intended as a comment on the DFARS inflation adjustment rule.)

Response: In 2006, the URL of a matrix was provided at FAR 1.109(d). Likewise, the current matrix is again available and the Councils have provided a revised Web address to access it.

b. Effective Date

One respondent expressed concern over the large number of systems changes that this rule will require and the difficulty of implementation in a short period of time. The respondent recommended providing ample time between the release of firm requirements and the required implementation.

Response: Although the Councils hoped to publish this final rule in time to allow 60 days for implementation, they were unable to meet that goal. The effective date of October 1, 2010, allows only a little more than the standard 30 days for implementations, but this effective date is consistent with the statutory requirements and the desired procedures for implementation of changes that impact the Federal Procurement Data System at the beginning of the fiscal year.

C. Changes Between the Proposed Rule and the Final Rule

Although there were no changes between the proposed rule and the final rule as the result of public comments, some of the thresholds changed due to lower inflation than was projected at the time of publication of the proposed rule. The proposed rule was based on a projected consumer price index (CPI) of 222 in April 2010. The final rule is based on an actual CPI of 217.631 through the end of March 2010. The end of March, 6 months before the effective date of the rule, is used as the cutoff in order to allow time for approval and publication of the final rule.

Because the actual CPI is more than 4 points lower than the projected CPI, proposed thresholds of at least $13 million are generally proportionally lower. Thresholds of less than $13 million were generally unchanged, due to rounding.

The effect of the final rule on heavily-used thresholds is the same as stated in the preamble to the proposed rule:

- The micro-purchase base threshold of $3,000 (FAR 2.101) is not changed.
- The simplified acquisition threshold (FAR 2.101) is raised from $100,000 to $150,000.
- The FedBizOpps preaward and post-award notices (FAR part 5) remain at $25,000 because of trade agreements.
- Commercial items test program ceiling (FAR 13.500) is raised from $5,500,000 to $6,500,000.

• The cost or pricing data threshold (FAR 15.403–4) is raised from $650,000 to $700,000.

• The prime contractor subcontracting plan (FAR 19.702) floor is raised from $550,000 to $650,000, and the construction threshold of $1,000,000 increases to $1,500,000.

This final rule is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the adjustment of acquisition-related thresholds for inflation maintains the status quo. The Councils note that the set-aside threshold of $100,000 increases to $150,000, which is not a detriment to small business. Although several respondents were concerned about the impact of some of the threshold changes on small businesses (see comment and response at B.1.c. and B.2.), the Councils reiterate that adjusting a threshold in an amount sufficient to keep pace with current inflation is neutral in impact on small businesses because it just maintains the status quo.

E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers:

• 9000–0006, Subcontracting Plans/ Subcontracting Report for Individual Contract (SF 294)—FAR Sections Affected: Subpart 19.7 and 52.219–9;

• 9000–0007, Summary Subcontract Report—FAR Sections Affected: Subpart 19.7, 53.219, and SF 295;

• 9000–0013, Cost or Pricing Data Exemption—FAR Sections Affected: Subparts 15.4, 42.7, 52.214–28, 52.215–12, 52.215–13, 52.215–20, and 52.215–21;

• 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data—FAR Sections Affected: 3.103 and 3.302;

• 9000–0022, Duty-Free Entry—FAR 48 CFR 52.225–8—FAR Section Affected: 52.225–8;

• 9000–0026, Change Order Accounting—FAR Sections Affected: 43.205(f) and 52.243–6;

• 9000–0027, Value Engineering Requirements—FAR Sections Affected: Subparts 48.1 and 48.2, 52.248–1, 52.248–2, and 52.248–3;

• 9000–0034, Examination of Records 5 CFR 1320.5(b) by Comptroller General and Contract Audit—FAR Sections Affected: 52.215–2, 52.212–5, and 52.214–26;

• 9000–0045, Bid, Performance, and Payment Bonds—FAR Sections Affected: Subparts 28.1 and 28.2, 52.228–1, 52.228–2, 52.228–13, 52.228–15, and 52.228–16;

• 9000–0058, Schedules for Construction Contracts—FAR Section Affected: 52.236–15;

• 9000–0060, Accident Prevention 48 CFR 52.236–13, Plans and Recordkeeping—FAR Section Affected: 52.236–13;

• 9000–0066, Professional Employee Compensation Plan—FAR Sections Affected: Subpart 22.11 and 52.222–46;

• 9000–0073, Advance Payments—FAR Sections Affected: Subpart 32.4 and 52.232–12;

• 9000–0077, Quality Assurance Requirements—FAR Sections Affected: Subparts 46.1 through 46.3, 52.246–2 through 52.246–8, 52.246–10, 52.246–12, and 52.246–15;

• 9000–0080, Integrity of Unit Prices—FAR Sections Affected: 15.408(f) and 52.215–14;

• 9000–0091, Anti-Kickback Procedures—FAR Sections Affected: 3.502, and 52.203–7;

• 9000–0094, Debarment and Suspension, FAR Sections Affected: 9.1, 9.4, 52.209–5, and 52.212–3(h);

• 9000–0101, Drug-Free Workplace—FAR Section Affected: 52.223–6(b)(5);

• 9000–0115, Notification of Ownership Changes—FAR Sections Affected: 15.408(k) and 52.215–19;

• 9000–0133, Defense Production Act Amendments—FAR Sections Affected: 34.1 and 52.234–1;

• 9000–0134, Environmentally Sound Products—FAR Sections Affected: 23.406 and 52.223–4;

• 9000–0135, Prospective Subcontractor Requests for Bonds, FAR 28.106–4(b), 52.228–12;

• 1215–0072, OFCCP Recordkeeping and Reporting Requirements—Supply and Service; and

• 1215–0119, Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549).

List of Subjects in 48 CFR Parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52

Government procurement.

Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.109 [Amended]

■ 2. Amend section 1.109 by removing from paragraph (d) "*http://acquisition.gov/far/facsframe.html*" and adding "*http://www.regulations.gov* (search FAR case 2008–024)" in its place.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 3. Amend section 2.101 in paragraph (b)(2) by—

■ a. Amending the definition "Major system" by removing from paragraph (1) "$173.5 million" and adding "$189.5 million", and removing "$814.5 million" and adding "$890 million"; and removing from paragraph (2) "$1.8 million" and adding "$2 million" in its place;

■ b. Amending the definition "Micro-purchase threshold" by removing from paragraph (3)(ii) "$25,000" and adding "$30,000" in its place; and

■ c. Amending the definition "Simplified acquisition threshold" by removing from the introductory paragraph "$100,000" and adding "$150,000" in its place; and removing from paragraph (1) "$250,000" and adding "$300,000" in its place.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.502–2 [Amended]

■ 4. Amend section 3.502–2 by removing from the introductory text of paragraph (i) "$100,000" and adding "$150,000" in its place.

3.804 [Amended]

■ 5. Amend section 3.804 by removing "$100,000" and adding "$150,000" in its place.

3.808 [Amended]

■ 6. Amend section 3.808 by removing from paragraphs (a) and (b) "$100,000" and adding "$150,000" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.101 [Amended]

■ 7. Amend section 5.101 by removing from the introductory text of paragraph (a)(2) "$10,000" and adding "$15,000" in its place.

5.205 [Amended]

■ 8. Amend section 5.205 by removing from paragraph (d)(2) "$10,000" and adding "$15,000" in its place.

5.206 [Amended]

■ 9. Amend section 5.206 by—
■ a. Removing from paragraph (a)(1) "$100,000" and adding "$150,000" in its place; and
■ b. Removing from paragraph (a)(2) "$100,000" and adding "$150,000" in its place, and removing "$10,000" and adding "$15,000" in its place.

5.303 [Amended]

■ 10. Amend section 5.303 by removing from the introductory text of paragraph (a) "$3.5 million" and adding "$4 million" in its place.

PART 6—COMPETITION REQUIREMENTS

6.304 [Amended]

■ 11. Amend section 6.304 by—
■ a. Removing from paragraph (a)(1) "$550,000" and adding "$650,000" in its place;
■ b. Removing from paragraph (a)(2) "$550,000" and adding "$650,000" in its place, and removing "$11.5 million" and adding "$12.5 million" in its place;
■ c. Removing from the introductory text of paragraph (a)(3) "$11.5 million" and adding "$12.5 million" in its place, removing "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place; and
■ d. Removing from paragraph (a)(4) "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place.

PART 7—ACQUISITION PLANNING

7.104 [Amended]

■ 12. Amend section 7.104 by—
■ a. Removing from paragraph (d)(2)(i)(A) "$7.5 million" and adding "$8 million" in its place;
■ b. Removing from paragraph (d)(2)(i)(B) "$5.5 million" and adding "$6 million" in its place; and
■ c. Removing from paragraph (d)(2)(i)(C) "$2 million" and adding "$2.5 million" in its place.

7.107 [Amended]

■ 13. Amend section 7.107 by—
■ a. Removing from paragraph (b)(1) "$86 million" and adding "$94 million" in its place; and
■ b. Removing from paragraph (b)(2) "$8.6 million" and adding "$9.4 million" in its place, and removing "$86 million" and adding "$94 million" in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405–6 [Amended]

■ 14. Amend section 8.405–6 by—
■ a. Removing from paragraph (h)(1) "$550,000" and adding "$650,000" in its place;
■ b. Removing from paragraph (h)(2) "$550,000" and adding "$650,000" in its place, and removing "$11.5 million" and adding "$12.5 million" in its place;
■ c. Removing from the introductory text of paragraph (h)(3) "$11.5 million" and adding "$12.5 million" in its place, removing "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place; and
■ d. Removing from paragraph (h)(4) "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

■ 15. Amend section 12.102 by removing from the introductory text of paragraph (f)(2) "$16 million" and adding "$17.5 million" in its place; and removing from paragraph (g)(1)(ii) "$27 million" and adding "$29.5 million" in its place.

12.203 [Amended]

■ 16. Amend section 12.203 by removing "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 [Amended]

■ 17. Amend section 13.000 by removing "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place.

13.003 [Amended]

■ 18. Amend section 13.003 by—
■ a. Removing from paragraph (b)(1) "$100,000" and adding "$150,000" in its place, and removing "$250,000" and adding "$300,000" in its place;
■ b. Removing from paragraph (c)(1)(ii) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place; and
■ c. Removing from paragraph (g)(2) "$5.5 million" and adding "$6.5 million", and removing "$11 million" and adding "$12 million" in its place.

13.005 [Amended]

■ 19. Amend section 13.005 by removing from paragraph (a)(5) "$100,000" and adding "$150,000" in its place.

13.201 [Amended]

■ 20. Amend section 13.201 by removing from paragraph (g)(1)(ii) "$25,000" and adding "$30,000" in its place.

13.303–5 [Amended]

■ 21. Amend section 13.303–5 by—
■ a. Removing from paragraph (b)(1) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place; and
■ b. Removing from paragraph (b)(2) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place.

13.500 [Amended]

■ 22. Amend section 13.500 by—
■ a. Removing from paragraph (a) "$5.5 million" and adding "$6.5 million" in its place, and removing "$11 million" and adding "$12 million" in its place; and
■ b. Removing from the introductory text of paragraph (e) "$11 million" and adding "$12 million" in its place.

13.501 [Amended]

■ 23. Amend section 13.501 by—
■ a. Removing from paragraph (a)(2)(i) "$100,000" and adding "$150,000" in its place, and removing "$550,000" and adding "$650,000" in its place;
■ b. Removing from paragraph (a)(2)(ii) "$550,000" and adding "$650,000" in its place, and removing "$11.5 million" and adding "$12.5 million" in its place;
■ c. Removing from paragraph (a)(2)(iii) "$11.5 million" and adding "$12.5 million" in its place, removing "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place; and
■ d. Removing from paragraph (a)(2)(iv) "$57 million" and adding "$62.5 million" in its place, and removing "$78.5 million" and adding "$85.5 million" in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.304 [Amended]

■ 24. Amend section 15.304 by removing from paragraph (c)(4) "$550,000" and adding "$650,000" in its place, and by removing "$1,000,000" and adding "$1.5 million" in its place.

15.403–1 [Amended]

■ 25. Amend section 15.403–1 by removing from paragraph (c)(3)(iv) "$16 million" and adding "$17.5 million" in its place.

15.403–4 [Amended]

■ 26. Amend section 15.403–4 by removing from the introductory texts of paragraphs (a)(1) and (a)(1)(iii) "$650,000" and adding "$700,000" in its place.

15.404–3 [Amended]

■ 27. Amend section 15.404–3 by removing from paragraph (c)(1)(i) "$11.5 million" and adding "$12.5 million" in its place.

15.407–2 [Amended]

■ 28. Amend section 15.407–2 by removing from paragraph (c)(1) and the introductory text of paragraph (c)(2) "$11.5 million" and adding "$12.5 million" in its place.

15.408 [Amended]

■ 29. Amend section 15.408 in Table 15–2, "II. Cost Elements" which follows paragraph (n), by removing from paragraph "A(2)" "$11.5 million" and adding "$12.5 million" in its place.

PART 16—TYPES OF CONTRACTS

16.206–2 [Amended]

■ 30. Amend section 16.206–2 by removing from the introductory paragraph "$100,000" and adding "$150,000" in its place.

16.206–3 [Amended]

■ 31. Amend section 16.206–3 by removing from paragraph (a) "$100,000" and adding "$150,000" in its place.

16.207–3 [Amended]

■ 32. Amend section 16.207–3 by removing from paragraph (d) "$100,000" and adding "$150,000" in its place.

16.503 [Amended]

■ 33. Amend section 16.503 by removing from paragraph (b)(2) "$100 million" and adding "$103 million" in its place; and removing from paragraph (d)(1) "$11.5 million" and adding "$12.5 million" in its place.

16.504 [Amended]

■ 34. Amend section 16.504 by removing from the introductory texts of paragraphs (c)(1)(ii)(D)(*1*) and (c)(1)(ii)(D)(*3*) "$100 million" and adding "$103 million" in its place; and removing from the introductory text of paragraph (c)(2)(i) "$11.5 million" and adding "$12.5 million" in its place.

16.506 [Amended]

■ 35. Amend section 16.506 by removing from paragraphs (f) and (g) "$11.5 million" and adding "$12.5 million" in its place.

PART 17—SPECIAL CONTRACTING METHODS

17.108 [Amended]

■ 36. Amend section 17.108 by removing from paragraph (a) "$11.5 million" and adding "$12.5 million" in its place; and removing from paragraph (b) "$114.5 million" and adding "$125 million" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.502–2 [Amended]

■ 37. Amend section 19.502–2 by—
■ a. Removing from paragraph (a) "$100,000" and adding "$150,000" in its place each time it appears (twice), and removing "$250,000" and adding "$300,000" in its place; and
■ b. Removing from paragraph (b) "$100,000" and adding "$150,000" in its place.

19.508 [Amended]

■ 38. Amend section 19.508 by removing from paragraph (e) "$100,000" and adding "$150,000" in its place.

19.702 [Amended]

■ 39. Amend section 19.702 by—
■ a. Removing from paragraph (a)(1) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place; and
■ b. Removing from paragraph (a)(2) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.704 [Amended]

■ 40. Amend section 19.704 by removing from paragraph (a)(9) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.708 [Amended]

■ 41. Amend section 19.708 by removing from paragraph (b)(1) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.805–1 [Amended]

■ 42. Amend section 19.805–1 by removing from paragraph (a)(2) "$5.5 million" and adding "$6.5 million" in its place, and removing "$3.5 million" and adding "$4 million" in its place.

19.1202–2 [Amended]

■ 43. Amend section 19.1202–2 by removing from paragraph (a) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

19.1306 [Amended]

■ 44. Amend section 19.1306 by removing from paragraph (a)(2)(i) "$5.5 million" and adding "$6.5 million" in its place; and removing from paragraph (a)(2)(ii) "$3.5 million" and adding "$4 million" in its place.

19.1406 [Amended]

■ 45. Amend section 19.1406 by removing from paragraph (a)(2)(i) "$5.5 million" and adding "$6 million" in its place; and removing from paragraph (a)(2)(ii) "$3 million" and adding "$3.5 million" in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.305 [Amended]

■ 46. Amend section 22.305 by removing from paragraph (a) "$100,000" and adding "$150,000" in its place.

22.602 [Amended]

■ 47. Amend section 22.602 by removing "$10,000" and adding "$15,000" in its place.

22.603 [Amended]

■ 48. Amend section 22.603 by removing from paragraph (b) "$10,000" and adding "$15,000" in its place.

22.605 [Amended]

■ 49. Amend section 22.605 by removing from paragraphs (a)(1), (a)(2), (a)(3), and (a)(5) "$10,000" and adding "$15,000" in its place each time it appears (six times).

22.1103 [Amended]

■ 50. Amend section 22.1103 by removing "$550,000" and adding "$650,000" in its place.

22.1402 [Amended]

■ 51. Amend section 22.1402 by removing from paragraph (a) "$10,000" and adding "$15,000" in its place.

22.1408 [Amended]

■ 52. Amend section 22.1408 by removing from the introductory text of paragraph (a) "$10,000" and adding "$15,000" in its place.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.406 [Amended]

■ 53. Amend section 23.406 by removing from paragraph (d) "$100,000" and adding "$150,000" in its place.

PART 28—BONDS AND INSURANCE

28.102–1 [Amended]

■ 54. Amend section 28.102–1 by removing from paragraphs (a) and (b)(1) "$100,000" and adding "$150,000" in its place.

28.102–2 [Amended]

■ 55. Amend section 28.102–2 by removing from the headings of paragraphs (b) and (c) "*$100,000*" and adding "*$150,000*" in its place.

28.102–3 [Amended]

■ 56. Amend section 28.102–3 by removing from paragraphs (a) and (b) "$100,000" and adding "$150,000" in its place.

PART 32—CONTRACT FINANCING

32.404 [Amended]

■ 57. Amend section 32.404 by removing from paragraph (a)(7)(i) "$10,000" and adding "$15,000" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.501 [Amended]

■ 58. Amend section 36.501 by removing from paragraph (b) "$1,000,000" and adding "$1.5 million" in its place each time it appears (twice).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.709 [Amended]

■ 59. Amend section 42.709 by removing from paragraph (b) "$650,000" and adding "$700,000" in its place.

42.709–6 [Amended]

■ 60. Amend section 42.709–6 by removing "$650,000" and adding "$700,000" in its place.

42.1502 [Amended]

■ 61. Amend section 42.1502 by removing from paragraph (e) "$550,000" and adding "$650,000" in its place each time it appears (twice).

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

50.102–1 [Amended]

■ 62. Amend section 50.102–1 by removing from paragraph (b) "$55,000" and adding "$65,000" in its place.

50.102–3 [Amended]

■ 63. Amend section 50.102–3 by removing from paragraph (b)(4) "$28.5 million" and adding "$31.5 million" in its place; and removing from paragraphs (e)(1)(i) and (e)(1)(ii) "$55,000" and adding "$65,000" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–7 [Amended]

■ 64. Amend section 52.203–7 by removing from the clause heading "(July 1995)" and adding "(Oct 2010)" in its place; and removing from paragraph (c)(5) "$100,000" and adding "$150,000" in its place.

52.203–12 [Amended]

■ 65. Amend section 52.203–12 by removing from the clause heading "(Sep 2007)" and adding "(Oct 2010)" in its place; and removing from paragraphs (g)(1) and (g)(3) "$100,000" and adding "$150,000" in its place.

52.204–8 [Amended]

■ 66. Amend section 52.204–8 by removing from the provision heading "(Feb 2009)" and adding "(Oct 2010)" in its place; and removing from paragraph (c)(1)(ii) "$100,000" and adding "$150,000" in its place.

52.212–3 [Amended]

■ 67. Amend section 52.212–3 by removing from the provision heading "(Aug 2009)" and adding "(Oct 2010)" in its place; and removing from paragraph (e) "$100,000" and adding "$150,000" in its place.

52.212–5 [Amended]

■ 68. Amend section 52.212–5 by—
■ a. Removing from the clause heading "(Jul 2010)" and adding "(Oct 2010)" in its place;
■ b. Removing from paragraph (b)(12)(i) "(Apr 2008)" and adding "(Oct 2010)" in its place;
■ c. Removing from paragraph (b)(25) "(Jun 1998)" and adding "(Oct 2010)" in its place;
■ d. Removing from paragraph (e)(1)(ii) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place;
■ e. Removing from paragraph (e)(1)(vi) "(Jun 1998)" and adding "(Oct 2010)" in its place; and
■ f. In Alternate II by—
■ 1. Removing from the Alternate heading "(*Apr 2010*)" and adding "(*Oct 2010*)" in its place;
■ 2. Removing from paragraph (e)(1)(ii)(C) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place; and
■ 3. Removing from paragraph (e)(1)(ii)(F) "(June 1998)" and adding "(Oct 2010)" in its place.

52.213–4 [Amended]

■ 69. Amend section 52.213–4 by—
■ a. Removing from the clause heading "(Jul 2010)" and adding "(Oct 2010)" in its place;
■ b. Removing from paragraph (a)(2)(vii) "(Jun 2010)" and adding "(Oct 2010)" in its place;
■ c. Removing from paragraph (b)(1)(ii) "(Dec 1996)" and adding "(Oct 2010)" in its place, and removing "$10,000" and adding "$15,000" in its place; and
■ d. Removing from paragraph (b)(1)(iv) "(June 1998)" and adding "(Oct 2010)" in its place, and removing "$10,000" and adding "$15,000" in its place.

52.219–9 [Amended]

■ 70. Amend section 52.219–9 by—
■ a. Removing from the clause heading "(Jul 2010)" and adding "(Oct 2010)" in its place;
■ b. Removing from paragraph (d)(9) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place;
■ c. Removing from the introductory text of paragraph (d)(11)(iii) "$100,000" and adding "$150,000" in its place; and
■ d. Removing from paragraph (l)(2)(i)(C) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place.

52.222–20 [Amended]

■ 71. Amend section 52.222–20 by removing from the clause heading "(Dec 1996)" and adding "(Oct 2010)" in its place; and removing from the introductory paragraph "$10,000" and adding "$15,000" in its place.

52.222–36 [Amended]

■ 72. Amend section 52.222–36 by removing from the clause heading "(Jun 1998)" and adding "(Oct 2010)" in its place; and removing from paragraph (d) "$10,000" and adding "$15,000" in its place.

52.225–8 [Amended]

■ 73. Amend section 52.225–8 by removing from the clause heading "(Feb 2000)" and adding "(Oct 2010)" in its place; and removing from the introductory texts of paragraphs (c)(1)

and (j)(2) "$10,000" and adding "$15,000" in its place.

52.228–15 [Amended]

■ 74. Amend section 52.228–15 by removing from the clause heading "(Nov 2006)" and adding "(Oct 2010)" in its place; and removing from the introductory text of paragraph (b) "$100,000" and adding "$150,000" in its place.

52.244–6 [Amended]

■ 75. Amend section 52.244–6 by—
■ a. Removing from the clause heading "(Jun 2010)" and adding "(Oct 2010)" in its place;
■ b. Removing from paragraph (c)(1)(iii) "$550,000" and adding "$650,000" in its place, and removing "$1,000,000" and adding "$1.5 million" in its place; and
■ c. Removing from paragraph (c)(1)(vi) "(Jun 1998)" and adding "(Oct 2010)" in its place.

52.248–1 [Amended]

■ 76. Amend section 52.248–1 by removing from the clause heading "(Feb 2000)" and adding "(Oct 2010)" in its place; and removing from paragraph (l) "$100,000" and adding "$150,000" in its place.

52.248–3 [Amended]

■ 77. Amend section 52.248–3 by removing from the clause heading "(Sep 2006)" and adding "(Oct 2010)" in its place; and removing from paragraph (h) "$55,000" and adding "$65,000" in its place.

[FR Doc. 2010–21025 Filed 8–27–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52

[FAC 2005–45; FAR Case 2005–036; Item II; Docket 2007–0001, Sequence 15]

RIN 9000–AK74

Federal Acquisition Regulation; Definition of Cost or Pricing Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the distinction between "certified cost or pricing data" and "data other than certified cost or pricing data", and to clarify requirements for submission of cost or pricing data.

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

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–45, FAR case 2005–036.

SUPPLEMENTARY INFORMATION:

A. Background

Subpart 15.4 of the FAR describes the contracting officer's responsibility to purchase supplies and services at fair and reasonable prices and the use of data and information in meeting this requirement. This subpart incorporates the requirements of the Truth In Negotiations Act (TINA), 10 U.S.C. 2306a and 41 U.S.C. 254b, which address the requirements for the submission of cost or pricing data and the circumstances under which a contractor must certify to their accuracy, completeness, and currency.

The Councils believe that the implementation of TINA in FAR subpart 15.4 is not sufficiently clear. In particular, there is confusion regarding the right of the Government to request "data other than certified cost or pricing data," the obligation of the offeror to provide this data, and the definition of this term.

This lack of clarity is due, in large part, to definitions that overlap and are not identical to TINA. For example, the term "cost or pricing data" is defined in the FAR to mean certified cost or pricing data, whereas TINA does not make certification part of the definition of this term. This regulatory refinement has led to confusion regarding the level of information that a contracting officer may request to establish fair and reasonable pricing including a misunderstanding by some that the data elements that comprise cost or pricing data cannot be requested by the Government unless the data are required by law to be submitted to the contracting officer in a certified form. This confusion has been exacerbated by the FAR's use of the phrase "information other than cost or pricing data," which has made it difficult for contracting officers to understand the circumstances when data other than certified cost or pricing data should be obtained to protect the Government from paying unreasonable prices.

Even the basic articulation of policy regarding the use of data to establish the fairness and reasonableness of offered prices in the introductory paragraph of FAR 15.402(a) has lacked a certain level of clarity that creates uncertainty. For many years, this paragraph has appropriately cautioned contracting officers not to obtain more information than is necessary—and the FAR must continue to do so. However this paragraph should also, but currently does not, expressly mention the underlying statutory authority to collect "data other than certified cost or pricing data." Because of this omission, some contracting officers may be under the misperception that there is a greater responsibility to avoid asking unnecessarily for the submission of cost or pricing data than there is, in the first instance, to determine whether and how much of this data may be required, in a given case, to establish price fairness and reasonableness. In fact, both responsibilities—*i.e.,* obtaining data that are adequate for evaluating the reasonableness of the price and taking appropriate care not to ask for more data than is necessary—are inextricably interrelated and equally important. As such, the FAR needs to communicate this message more clearly.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 20092, April 23, 2007, to revise the FAR definition of "cost or pricing data"; change the term "information other than cost or pricing data" to "data other than certified cost or pricing data"; add a definition of "certified cost or pricing data" to make the terms and definitions consistent with TINA and more understandable to the general reader; change terminology throughout the FAR; and clarify the need for contracting officers to obtain "data other than certified cost or pricing data" when there is no other means to determine fair and reasonable pricing during price analysis.

Based on comments received on the proposed rule, a public meeting held on November 1, 2007, and additional deliberations (which are all discussed in greater detail below), the Councils have adopted a final rule that—

• Clarifies terminology used in the FAR to make it consistent with TINA, resulting in (i) refinements to the regulatory definition of cost or pricing data, (ii) the addition of a definition for "certified cost or pricing data," (iii) the addition of a definition for "data other than certified cost or pricing data," and

(iv) deletion of the phrase "information other than cost or pricing data";

• Clarifies responsibilities regarding the request for, and submission of, "data other than certified cost or pricing data" to establish fair and reasonable pricing, both in the case when "certified cost or pricing data" is required and is not required;

• Retains the current order of preference for determining the type of cost or pricing data required to establish fair and reasonable prices when certified cost or pricing data are not required;

• Retains and reinforces important statements to explain why contracting officers must not require, unnecessarily, the submission of "data other than certified cost or pricing data";

• Clarifies the instructions for offerors preparing a contract pricing proposal when cost or pricing data are required so that such instructions are consistent with the clarified terminology and policies for determining the type and quantity of data necessary to establish a fair and reasonable price; and

• Supplements existing coverage to clarify current coverage and achieve greater understanding by contracting officers and contractors.

This rule neither expands nor diminishes the existing rights of contracting officers to request cost or pricing data (whether certified or other than certified) or other information, or the existing responsibilities of the offeror to submit such data or other information. Similarly, the rule does not require, encourage, or authorize contracting officers to obtain cost or pricing data or other information unless it is needed to determine that prices offered are fair and reasonable, which may include the request for such data in connection with a cost realism analysis. As the rule explains, requiring contractors to submit more data than what is needed can "lead to increased proposal preparation costs, generally extend acquisition lead time, and consume additional contractor and Government resources."

Whether a contractor must submit "certified cost or pricing data" is based on the requirements of TINA and its stated exceptions. With respect to "data other than certified cost or pricing data," the introductory policy statement in FAR 15.402(a) has been clarified to tie together the contracting officer's longstanding statutory responsibility to request the data and information necessary to establish a fair and reasonable price—as stated in TINA at 10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)—with the caution that, in doing so, the contracting officer must not request more data than is necessary. By doing so, the FAR will provide a more complete articulation of the policy underlying the use of "data other than certified cost or pricing data" in establishing price fairness and reasonableness, in furtherance of the contracting officer's duty to serve as a responsible steward of the taxpayer's resources.

B. Public Comments

The first comment period closed on June 22, 2007. Comments were received from 11 respondents. As a result of the comments received, a public meeting was scheduled with notice provided at 72 FR 61854 on November 1, 2007. The public meeting was held on November 15, 2007, and was followed by a one week period for submission of additional comments. Several respondents submitted additional comments. The public comments are addressed in the following analysis:

General Comments

Some respondents noted that the proposed changes should alleviate confusion. Others raised the following general concerns regarding various aspects of the proposed rule.

1. Some respondents were concerned that the proposed rule will result in contracting officers by-passing normal market research and pricing techniques and require contractors to submit full cost or pricing data as if the Truth in Negotiations Act (TINA) applied.

Response: The current FAR, as well as the proposed and final rule, protect against this practice. Contracting officers must generally follow the order of preference at FAR 15.402, and are required by that section to "obtain the type and quantity of data necessary to establish a fair and reasonable price, but not more data than is necessary." In theory, this could include all of the elements prescribed under FAR 15.408, Table
15–2. However, in most cases the data necessary for a contracting officer to determine cost fairness and reasonableness, or cost realism, will fall short of this level of data. The rule should not result in contracting officers requiring contractors to submit full cost or pricing data as if certification will be required when it is not necessary.

2. Public comments did point out an error where the proposed rule changed the FAR to require certified cost or pricing data "and" data other than certified cost or pricing data.

Response: The final rule corrects several instances where "and" was incorrectly used, replacing it with "or". However, there are circumstances where "and" is appropriate and those have been retained. The final rule recognizes that the contracting officer may need to request data other than certified cost or pricing data, in addition to certified cost or pricing data, to establish fair and reasonable pricing.

3. Some respondents were concerned about the broadening of the definition of "information other than cost or pricing data" by adding the words "and judgmental information."

Response: Data used to support an offer will necessarily contain some information that is non-factual, *i.e.,* judgmental information. Due to its nature, judgmental information cannot be certified. Even in situations where "certified cost or pricing data" are required, judgmental information is not certified, and it is part of "data other than certified cost or pricing data" that supplements certified cost or pricing data. The final rule deletes the phrase "information other than cost or pricing data," but includes "judgmental information" and "judgmental factors" in the definition of "data other than certified cost or pricing data." The final rule also includes additional language to provide consistency with FAR 15.408, Table 15–2 (*i.e.,* any information reasonably required to explain the estimating process, including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and the nature and amount of any contingencies included in the proposed price). Aligning the definition of "data other than certified cost or pricing data" and the text of the language in FAR 15.408, Table 15–2, keeps the definition consistent with the current FAR requirements and TINA. The Councils note that the existence of a judgment is factual, but the nature and amount of the judgment are not.

4. Many respondents were concerned that the proposed rule inappropriately adds the phrase "data other than certified cost or pricing data" throughout the proposed rule when only certified cost or pricing data apply.

Response: The final rule deletes that addition in some instances. There are other instances where both phrases: "Certified cost or pricing data" and "data other than certified cost or pricing data" are applicable. See the response to General Comments number 2.

5. Several respondents were concerned that offerors of commercial items would be required to submit cost data in all instances.

Response: Such an outcome would be contrary to the intent of the rule, which does not alter the current intent of the

FAR regarding the type and quantity of data to determine if the price of a commercial item is fair and reasonable. FAR 15.403–1(c)(3) specifically exempts commercial items from certified cost or pricing data requirements, and this rule does not change that exception. Also, FAR 15.403–3(c)(2) sets limitations on the type of cost data or pricing data that can be requested regarding commercial items. When contracting officers determine that they can use price analysis to determine the price to be fair and reasonable, the order of preference at FAR 15.402 means cost data will generally not be obtained for pricing commercial items. Contracting officers are to obtain only that information needed to determine a fair and reasonable price, which, in some cases, may include contractor cost data (without certification) for commercial items.

Specific Comments

1. Comment: Add a definition of "cost data," which is referenced at FAR 15.402(a)(2)(ii).

Response: We do not believe a separate definition is required. The revised definition of "data other than certified cost or pricing data" and the existing definition of "information other than cost or pricing data" both encompass cost data and pricing data depending on what is needed by the contracting officer, using the order of preference at FAR 15.402(a). The definition simply breaks out various aspects of "data other than certified cost or pricing data." The cost data refers to data related to a contractor's costs.

2. Comment: Separate enumeration of "cost or pricing data" in FAR 4.803(a)(17)(i) "Content of Contract Files" is unnecessary because it is repetitive with existing definitions in FAR 2.101.

Response: The final rule revises FAR 4.803(a)(17)(i) to read "certified cost or pricing data" consistent with the revised definition. The requirement at FAR 4.803(a)(17) is for documenting the contract file for the contracting officer's determination of a fair and reasonable price, and lists the types of data that should be maintained. "Certified cost or pricing data" includes all data that conforms to FAR 15.408, Table 15–2, while "data other than certified cost or pricing data" includes only the level of data the contracting officer needs to determine the price fair and reasonable. Whichever is required to be submitted, this section makes it clear that it shall be documented in the contract file.

3. Comment: FAR 13.106–3(a)(2)(iii) contradicts FAR 15.404–1(b)(2)(iv) as FAR 13.106–3(a)(2)(iii) appears to indicate non-acceptability of price lists and catalogs as a price analysis stand alone technique.

Response: Neither of the referenced texts is part of this rulemaking. Nonetheless, we note that the references do not conflict. Both references list various techniques and types of information the contracting officer may use, either individually or collectively. The type and extent of data needed is based on the contracting officer's business judgment. FAR 13.106–3(a)(2)(iii) simply adds a cautionary note when using catalog prices.

4. Comment: Change language in the proposed FAR 15.403–3(a)(1)(ii) from "If the contracting officer cannot obtain adequate data from sources other than the offeror, the contracting officer shall require" to "If the contracting officer determines that adequate data from sources other than the offeror is not available, the contracting officer shall require."

Response: We concur that the contracting officer should determine when adequate data is not available and have clarified the final rule accordingly. However, "data" is plural and requires the verb "are available" rather than "is available".

5. Comment: The new language at FAR 15.404–1(b) confuses the difference between cost analysis and price analysis when it states that "Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor when there is no other means for determining a fair and reasonable price." Price analysis should only be applied to sales data obtained from the offeror.

Response: The referenced paragraph is a discussion of "price" analysis. The referenced text simply points out that in performing price analysis, the contracting officer may require data other than certified cost or pricing data. Price analysis is not limited to sales data.

6. Comment: Language at FAR 15.404–1(b)(2)(ii) needs clarification.

Response: Changes have been made to FAR 15.404–1(b)(2)(ii) to clarify the text.

7. Comment: In reference to FAR 15.408, Table 15–2, changing the word "information" to the phrase "data other than certified cost or pricing data" means that the contractor does not have to certify all the cost or pricing data. Changing these terms is changing the requirement under TINA.

Response: The final rule utilizes the term "information" in a few instances, not as a term of art as it had been used in FAR part 15 prior to this revision, but generically. The requirements under TINA have not been changed.

8. Comment: The proposed language that adds "certified cost or pricing data and data other than certified cost or pricing data" at FAR 15.408, Table 15–2, means that the offeror could withhold disclosure or certification of cost or pricing data related to its subcontractors, in cases when the subcontractor is not required to certify.

Response: When "certified cost or pricing data" is required, the prime contractor is responsible for certifying the completeness of all cost or pricing data, which includes subcontractor price quotes and cost data when the subcontractor is not required to certify to its data. The requirement for the prime contractor to certify that it has submitted all of the facts regarding subcontractor cost data or pricing data, even if the subcontractor is not required to submit "certified cost or pricing data," is implicitly in the certification language at FAR 15.406–2(a).

9. Comment: Throughout the proposed rule, including the clauses, change "required certified cost or pricing data and data other than certified cost or pricing data" back to "required certified cost or pricing data, or data other than certified cost or pricing data."

Response: The phrases "certified cost or pricing data" and "data other than certified cost or pricing data" are joined with "and" when they are used to refer to both types of data collectively. The phrases are joined with "or" when the phrases are used to refer to either one or the other type of data. See the response to General Comments number 2.

10. Comment: FAR 52.214–26, Audit and Records—Sealed Bidding, expand the Government's rights by allowing the Government to audit and review the contractor's records when certified cost or pricing data are not required. There is no authority to do this.

Response: This change was in error and the final rule deletes that addition.

11. Comment: The proposed rule inappropriately adds the phrase "data other than certified cost or pricing data" to clauses and FAR 15.408, Table 15–2, when only certified cost or pricing data apply.

Response: The final rule adds clarifying language to indicate that, when certified cost or pricing data is required, data other than certified cost or pricing data may also be required. See the responses to General Comments numbers 2 and 4, and Specific Comments number 9.

12. Comment: Why is Alternate I of FAR 52.215–21(b) marked reserved? It shouldn't be.

Response: The final rule retains Alternate I.

13. Comment: The Councils are inappropriately prescribing the use of FAR 15.408, Table 15–2, for both "certified cost or pricing data" and "data other than certified cost or pricing data". By doing so, the Councils are advocating cost analysis on commercial items.

Response: This comment is similar to the Specific Comments numbers 7 and 9. The language in the table and clauses is revised in the final rule. FAR 15.408, Table 15–2, applies only when certified cost or pricing data are required. However, when certified cost or pricing data are required, data other than certified cost or pricing data may also be required. Additionally, cost analysis can be used when an item that was thought initially to be commercial is found not to have sufficient sales data or other information for determining the price to be fair and reasonable. In each situation, and in accordance with FAR 1.602–2, the contracting officer must exercise business judgment as to the level and type of data needed to determine that prices are fair and reasonable following the order of preference at FAR 15.402(a). See the responses to General Comments numbers 2 and 4, and to Specific Comments numbers 7 and 9.

14. Comment: The rule will not address situations when a contracting officer inappropriately determines an item to be commercial.

Response: Commercial item determinations are beyond the scope of this rule. This rule is to clarify what data are needed to determine whether prices are fair and reasonable as required by FAR part 15. The procedures for making the determination under FAR part 12 are outside the scope of this rule about the definitions of phrases associated with cost or pricing data, and the requirements for their submission.

15. Comment: Cost data should only be used when there are no other means to determine whether price is fair and reasonable.

Response: The order of preference at FAR 15.402(a) has been restructured, but is essentially unchanged. Certified cost or pricing data must be obtained when required by TINA. When certified cost or pricing data are not required, the order of preference at FAR 15.402(a) must generally be followed.

16. Comment: Contracting officers should never have to rely on cost data from the offeror to determine if the price for a commercial item is fair and reasonable.

Response: The contracting officer retains the authority to request cost data where other information, including pricing data, is either unavailable or inadequate to establish that prices offered for a commercial item are fair and reasonable. However, the FAR policy is to only require submission of "data other than certified cost or pricing data," and only to the extent necessary to support the contracting officer's determination of a fair and reasonable price.

17. Comment: The proposed rule demands that the contracting officer obtains additional data (and "all facts") regardless of needs and reverses the presumption of the present FAR, which asserts that the contracting officer should not obtain more information than needed. The proposed rule requires greatly increased amounts of information even where certified cost or pricing data is not required. This is contrary to the language of the statute (TINA).

Response: The language in FAR 15.402(a); FAR 15.408, FAR Table 15–2; and the clauses are revised in the final rule. When certified cost or pricing data are required, data other than certified cost or pricing data may also be required. The contracting officer is cautioned to obtain data other than certified cost or pricing as necessary to establish a fair and reasonable price. See section A, Background; see also the responses to the Specific Comments numbers 7, 9, and 16.

18. Comment: The proposed FAR 15.403–3(c)(1) implies that contractors face vague and unbounded disclosure obligations (*i.e.,* "cost data, or any other information the contracting officer requires" and "at a minimum, appropriate data on * * * prices") that likely will be highly varied in application to different procurements. This costly burden is unnecessary—certainly where it applies to exempt procurements, *e.g.,* commercial items. Proposed changes conflict with TINA.

Response: TINA and the existing FAR permit a contracting officer to obtain all data that is needed, in the contracting officer's discretion (which may vary among contracting officers), to determine the price to be fair and reasonable. See the order of preference at FAR 15.402(a), Pricing Policy. The present rule does not change that. The intent is to leave latitude for contracting officers to exercise business judgment (FAR 1.602–2) in obtaining whatever data are required in order to be able to determine a price fair and reasonable, following the order of preference at FAR 15.402(a). No negotiated procurements, including procurements of commercial items, are "exempt" from a contracting officer requiring submission of data other than certified cost or pricing data when it is needed to determine a fair and reasonable price. The proposed rule is consistent with the existing FAR, the requirements of TINA, the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), and the Clinger Cohen Act of 1996 (Pub. L. 104–106). It does not add any requirements that do not already exist in the statutes and FAR. See the response to Specific Comments number 16.

19. Comment: The proposed rule adds the requirement that price be "fair" and "reasonable" in circumstances where the previous FAR required only demonstration of price "reasonableness."

Response: Under the existing FAR, the contracting officer must determine prices to be fair and reasonable (see FAR 15.402(a)). The final rule makes no changes to this basic policy.

20. Comment: The proposed rule also obligates the contracting officer to require submission of "data other than certified cost or pricing data." This is a profound change because the contractor must submit both certified cost or pricing data and something else.

Response: See section A, Background. Also, see responses to Specific Comments numbers 7, 9, and 11.

21. Comment: The proposed rule at FAR 15.404–1(b)(1) adds a new term, "price or cost data." What is "price or cost data?"

Response: The language has been removed. The final rule clarifies the language at FAR 15.404–1(b) to correct "price or cost data" to "data other than certified cost or pricing data".

22. Comment: What is "commercial item analysis" at FAR 15.404–1(b)?

Response: The phrase has been deleted.

23. Comment: The proposed rule at FAR 15.404–1(b)(2)(ii) creates extensive additional disclosure requirements, which affect the eligibility for the "commercial item" exemption. These include very particular demands concerning "prior price," "terms and conditions," "market and economic factors," "differences between the similar item and the item being procured" and encouragement to use expert technical advice to evaluate "minor modifications." The effect of these requirements is to reduce the availability and utility of the "commercial item" exception and to create, again, a whole class of "surrogate" data that is uncertified but nevertheless burdensome and expensive to produce.

Response: The contracting officer must be able to determine that the price is fair and reasonable. The fair and reasonable price can be the commercial

price. To the extent there are sufficient commercial sales of the item being procured for the same or similar quantities, both the validity of the comparison and the reasonableness of the previous prices can be established, and the company shares that commercial sales data with the contracting officer when it cannot be obtained by the Government through normal market research, so that the contracting officer can determine a fair and reasonable price, obtaining further "data other than certified cost or pricing data" will not be necessary. See section A, Background, and the responses to Specific Comments numbers 7, 9, and 11.

24. Comment: The rule will create confusion when commercial items are being procured by putting contracting officers in a position where the only safe alternative will be to demand the maximum amount of data from an offeror.

Response: There is no fundamental change from the existing requirements that contracting officers: "shall not obtain more data or information than necessary." To the extent there are sufficient commercial sales of the item for the same or similar quantities, both the validity of the comparison and the reasonableness of the previous price can be established, and the company shares that information with the contracting officer when it cannot be obtained by the Government through normal market research, so that the contracting officer can determine a fair and reasonable price, additional data requests will not be required. This is not a departure from the existing FAR requirement. See section A, Background.

25. Comment: We believe the FAR Council is expressing dissatisfaction with the ability of the acquisition workforce to do price analysis rather than the more familiar cost analysis and recommend providing adequate training rather than making significant changes to established regulations.

Response: See section A, Background, and the Background section of the proposed rule **Federal Register** notice (72 FR 20092, April 23, 2007), concerning the confusion over the current FAR language, and further expressed in these public comments about existing FAR requirements. Training of our acquisition workforce in all types of proposal analysis is an ongoing effort. The workforce needs the cooperation of contractors to submit required data so that contracting officers can ensure a fair and reasonable price. We believe this final rule helps clarify requirements for submitting data consistent with the existing FAR. The Councils anticipate the development of training to help the workforce understand and apply the rule.

26. Comment: Recommend Councils conduct a public meeting.

Response: A public meeting was held on November 15, 2007, to ensure that all interested parties had an opportunity to provide additional input. The public meeting was followed by the opportunity for interested parties to submit comments.

27. Comment: Existing regulations delineate that data provided in support of proposals fall into two distinct categories: "cost or pricing data" and "information other than cost or pricing data." The primary differentiator between cost or pricing data and information other than cost or pricing data is that the former requires certification in accordance with FAR 15.406–2, while the latter is any type of information that does not require certification per FAR 15.406–2. The existing regulations clearly state that "information other than cost or pricing data" is "any type of information that is not required to be certified" and that the definition "includes cost or pricing data for which certification is determined inapplicable after submission." As a result, there is no ambiguity as to the type of data that can be requested or obtained through the submission of "information other than cost or pricing data." The Councils have changed the type of non-certifiable data to include "cost data" rather than what was previously referred to as "cost information." The FAR Council's intent to clarify that the two terms result in underlying data that is the same, appears to be in direct conflict with the statutory definition. That statute does not eliminate the possibility that the data may be the same but it provides a different standard for "other information." Accordingly, there are two different types of data defined in TINA, "cost or pricing data" that is required to be certified and "other information" that is not required to be certified.

Response: We believe this comment demonstrates the confusion reported to the Councils. TINA and FAR 15.402(a) require that the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price. We agree with the respondent's comment that the definition of "information other than cost or pricing data", in effect prior to this final rule, included cost or pricing data for which certification is determined inapplicable after submission. The contracting officer must obtain whatever level of data is needed to determine price reasonableness, but cannot require certification of cost or pricing data (should cost or pricing data be needed) if the certification requirement of TINA does not apply. However, some contractors incorrectly believed that the FAR definition of "information other than cost or pricing data" in effect prior to this final rule, precluded the contracting officer from obtaining uncertified cost or pricing data.

Section 2306a(h) of Title 10, as well as section 254b(h) of Title 41 of the U.S. Code, define both "cost or pricing data" and the circumstances under which that data must be certified. When the data must be certified, that data becomes "certified cost or pricing data." If, after submittal, no certification is required, the data becomes "data other than certified cost or pricing data." Sections 2306a(d)(1) and 254b(d)(1) state: "When certified cost or pricing data are not required * * * the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price * * * the contracting officer shall require that the data submitted include, at a minimum, appropriate information on prices at which the same or similar items have previously been sold. * * *" The statutory requirement is to obtain data necessary to determine the reasonableness of the price. The contracting officer cannot require certification of the data submitted if TINA does not require it to be certified. If the contracting officer has no other means to determine the reasonableness of the price (the main requirement of TINA), then the contracting officer shall require the submission of the necessary data needed to make that determination, including, at a minimum, prices at which the same or similar items have been previously sold. TINA does not prohibit obtaining cost or pricing data when "certified cost or pricing data" is not required to be obtained, but TINA (10 U.S.C. 2306(d)), as well as the FAR, provide requirements to ensure the contracting officer does not require more data than is necessary to determine that the prices are fair and reasonable.

28. Comment: The proposed rule would lead contracting officers to expect offerors to maintain traditional Government cost accounting data for commercial items.

Response: There is no requirement for anything more than the type of commercial data customarily maintained. See FAR 15.403–3(a)(2), FAR 15.403–3(c)(2), and FAR 15.403–5(b)(2).

29. Comment: Use of the word "claimed" at FAR 15.403–1(c)(3)(i) reveals a great deal about the underlying philosophy that is perpetuated throughout the proposed rule.

Response: The word "claimed" in FAR 15.403–1(c)(3)(i) is not new; it is part of the existing language. There is no inference of intent on the use of the word. The intent of the rule is to make it clear that contracting officers must obtain the level of data needed in order to meet the requirements of TINA (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)), which states that "* * * the contracting officer shall require submission of data * * * necessary to determine the reasonableness of the price * * *."

30. Comment: FAR subpart 15.4 should not be used to determine whether or not an item being offered is a commercial item.

Response: FAR subpart 15.4 is not used to determine whether or not an item is a commercial item. However, it is appropriate in FAR subpart 15.4 to require contracting officers to affirmatively decide if an item being offered meets the definition of "commercial item" before asking a contractor to provide cost or pricing data, if cost analysis is the contracting officer's only means to determine the price to be fair and reasonable.

31. Comment: The proposed change to FAR 15.403–3(c), Commercial Items, states that even if an offeror provides catalog or market pricing, the contracting officer cannot assume that such information would be sufficient to establish a fair and reasonable price, and therefore, the contracting officer "shall require" the offeror to submit data other than certified cost or pricing data to support further analysis.

Response: There was no substantive change in the language in question; it is essentially the existing language. The language gives no mention to "market pricing." Considering FAR subpart 15.4 in its entirety, if there is adequate market pricing, the contracting officer is prohibited from requiring data from the contractor (FAR 15.402(a) and FAR 15.403–3(a)). The current language and revised language in this final rule only requires submission of data other than certified cost or pricing data in accordance with the order of preference at FAR 15.402(a), and then only to the level of detail needed to support a determination of a fair and reasonable price.

32. Comment: The proposed change to FAR 52.215–20, illustrates the tremendous confusion the proposed rule will cause and the onerous nature of the pricing requirements for commercial items. The proposed rule would "require" contracting officers to demand that offerors proposing commercial items submit "data other than certified cost or pricing data" if the contracting officer believes it is necessary to determine prices fair and reasonable. Proposed paragraph (b) of FAR 52.215–20 then states that if the offeror is not granted an exception from TINA, then the offeror shall submit "data other than certified cost or pricing data."

Response: FAR 52.215–20 clause requires offerors to submit "data other than certified cost or pricing data" if the contracting officer believes it is necessary to determine prices to be fair and reasonable. The final rule clarifies in paragraph (b) of the contract clause FAR 52.215–20 that the data required under Table 15–2 includes "data other than certified cost or pricing data" as well as "certified cost or pricing data".

33. Comment: Within the proposed rule, the Councils have made significant changes that result in the reprioritizing of the Government's pricing policy as detailed at FAR 15.402.

Response: In response to comments, the final rule reorganizes the FAR 15.402(a) to clarify the policy, but the policy remains essentially unchanged. See section A, Background.

34. Comment: The proposed rule revisions at FAR 15.402(a) suggests that the "data other than certified cost or pricing data" is preferred over "certified cost or pricing data", even when certification is required by FAR 15.403–4.

Response: In response to comments, the final rule reorganizes FAR 15.402(a) to emphasize that certified cost or pricing data shall be obtained when required by TINA. When certified cost or pricing data are not required, the order of preference at FAR 15.402(a)(2) should generally be followed.

35. Comment: The DoD-specific issues cited in the proposed rule and at the public meeting have been adequately addressed by the Director of Defense Procurement and Acquisition Policy through recent policy memos, policy guidance, and contract pricing training. These actions should be given a chance to work before further regulatory changes are made that would impede the U.S. Government's access to the commercial marketplace.

Response: The purpose of the FAR rulemaking is to eliminate confusion throughout the Government and to clarify for all agencies and their contractors definitions and associated responsibilities for the request and submission of certified cost or pricing data and data other than certified cost or pricing data. While DoD guidance is helpful to the DoD acquisition workforce, years of experiences throughout Government show that the current FAR language is causing confusion over what a contractor is required to submit to support prices. This confusion leads to inefficient procurement processes and sometimes leads to the Government paying unreasonable prices. The revised language clarifies the regulation, and is consistent with TINA, by requiring the contracting officer to obtain only the data necessary to determine the fairness and reasonableness of the price.

36. Comment: The current FAR rules, when properly exercised, are already capable of achieving fair and reasonable prices and, in this respondent's opinion, the definitions are clear and unambiguous, and contracting officers have significant latitude under current regulations to acquire data from contractors to support price reasonableness of commercial items.

Response: See section A, Background, and also the responses to Specific Comments numbers 7, 9, 11, and 23.

37. Comment: There are no proposed changes to make contracting officers aware that cost data from commercial companies will most likely not be in a form that complies with their expectations, training, or experience. Cost data from commercial companies will not comply with Cost Accounting Standards, FAR part 31, and are not generally suitable for certification under the Truth in Negotiations Act. The FAR council should not use terminology that is part of a cost-based contracting process.

Response: Current regulations and TINA already require contractors to provide certified cost or pricing data, and data other than certified cost or pricing data as necessary, that will enable the contracting officer to determine fair and reasonable prices. The rule clarifies the regulations by using language consistent with TINA more precisely. The rule does not expand the contracting officer's authority to request data from commercial companies when needed for the determination that prices are fair and reasonable. The challenge the comment reflects may be real, but it is not affected by the rule.

38. Comment: The proposed rule would revise the order of preference of data at FAR 15.402(a) and would eliminate the distinction between "cost or pricing data" and "information other than cost or pricing data."

Response: The order of preference is not changed. By eliminating the ambiguous phrase "information other than cost or pricing data," the rule

clarifies and maintains the distinction between "certified cost or pricing data" and "data other than certified cost or pricing data," tracking the statutory distinctions. As stated in other responses herein, the revised definitions clearly describe what is required by TINA and intended by this rule. TINA defines "cost or pricing data," and then prescribes when such data shall be certified. The nature and extent of "cost or pricing data" is the same regardless of whether it is certified or not. The statute also prescribes when a contractor must provide "data other than certified cost or pricing data" (which includes "cost or pricing data" and judgmental information) without being required to certify it. Under the current law and regulations, a contracting officer is empowered to obtain all the data and judgmental information needed to determine a fair and reasonable price, but is restricted as to which data, and when that data, must be certified.

39. Comment: By eliminating the term "information" and substituting the term "data" the rule would add ambiguity as to the legal status of the submission by commercial companies that cannot provide FAR compliant cost data.

Response: The use of the term "data" is consistent with the statute and with the Government's need to obtain factual information to be used as a basis for reasoning, discussion, or calculation. The rule does not change the existing strong limitations in the FAR on the circumstances under which a contracting officer can obtain certified cost or pricing data from commercial sources. It does not change the current restrictions on the amount of data a contracting officer can obtain (*i.e.,* only that data to the extent necessary to determine fair and reasonable prices.) The rule also retains the existing flexibility to use contractor data formats.

40. Comment: The "of a type" language in the proposed rule at FAR 15.404–1(b)(2)(i) and FAR 15.401(b)(ii)(C) introduces ambiguity as to the meaning of a commercial item. It is recommended that the "of a type" language be deleted from the proposed rule as it seems to add no clarity to the definition of a commercial item or how commercial items are to be priced.

Response: We believe the respondent meant FAR 15.404–1(b)(2)(ii) and FAR 15.404–1(b)(2)(ii)(C). The references in the comment either do not have the "of a type" text, or the reference is erroneous. These subparagraphs of the FAR provide requirements for price analysis and appropriately directs contracting officers to consider price comparisons even in situations when the proposed item is "of a type" that is customarily used by the general public or non-governmental entities for purposes other than governmental purposes, a term used consistently in the definition of commercial item at FAR 2.101. This section also appropriately directs contracting officers to obtain technical assistance.

41. Comment: The proposed rule fails to address the confusion in pricing noncompetitive (sole-source) commercial items and guides the contracting officer to perform price analysis of previous DoD (Government) prices to determine price reasonableness.

Response: The intent of the rule is for contracting officers to follow the order of preference, which includes price analysis (including price analysis of previous Government and non-Government sales). The Councils recognize, however, that there has been confusion over the type and amount of data that can be required by a contracting officer, particularly in non-competitive (sole-source) acquisitions of commercial items. Accordingly, for the sake of clarification, changes were made at FAR 15.402(a)(2)(ii)(A), FAR 15.403–1(c)(3)(i), and FAR 15.403–3(c) to emphasize the need for the contracting officer to review the history of sales to non-governmental and governmental entities, determine whether an item is a commercial item, and decide whether certified cost or pricing data are required. The changes to FAR 15.402(a) provide sufficient flexibility to the contracting officer to address the specific contracting situation. As revised, this rule clarifies that TINA authorizes a contracting officer to obtain data other than certified cost or pricing data to the extent necessary to establish a fair and reasonable price, even when the acquisition is for a commercial item. Therefore, the rule sets forth appropriate guidance for determining fair and reasonable prices.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not expand or diminish the existing rights of the contracting officer to obtain cost data or pricing data. Further, most acquisitions involving small entities are under the threshold for the submission of certified cost or pricing data of $700,000, the new TINA threshold (see FAR Case 2008–024, Item I of this FAC). Finally, this rule will benefit all entities, both large and small, by clarifying the requirements for the submission of "certified cost or pricing data" and "data other than certified cost or pricing data."

D. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0013.

List of Subjects in 48 CFR Parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52

Government procurement.

Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by—

■ a. Adding, in alphabetical order, the definition "Certified cost or pricing data";

■ b. Revising the introductory text of the definition "Cost or pricing data";

■ c. Adding, in alphabetical order, the definition "Data other than certified cost or pricing data"; and

■ d. Removing the definition "Information other than cost or pricing data".

The added and revised text reads as follows:

2.101 Definitions

* * * * *

(b) * * *

(2) * * *

Certified cost or pricing data means "cost or pricing data" that were required to be submitted in accordance with FAR 15.403–4 and 15.403–5 and have been certified, or are required to be certified,

in accordance with 15.406–2. This certification states that, to the best of the person's knowledge and belief, the cost or pricing data are accurate, complete, and current as of a date certain before contract award. Cost or pricing data are required to be certified in certain procurements (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

Cost or pricing data (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include, but are not limited to, such factors as—

* * * * *

Data other than certified cost or pricing data means pricing data, cost data, and judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism. Such data may include the identical types of data as certified cost or pricing data, consistent with Table 15–2 of 15.408, but without the certification. The data may also include, for example, sales data and any information reasonably required to explain the offeror's estimating process, including, but not limited to—

(1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed price.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.704 [Amended]

■ 3. Amend section 4.704 in paragraph (b) by removing "for cost" and adding "for certified cost" in its place.

■ 4. Amend section 4.803 by revising paragraphs (a)(17) and (b)(4) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(17) Data and information related to the contracting officer's determination of a fair and reasonable price. This may include—

(i) Certified cost or pricing data;

(ii) Data other than certified cost or pricing data;

(iii) Justification for waiver from the requirement to submit certified cost or pricing data; or

(iv) Certificates of Current Cost or Pricing Data.

* * * * *

(b) * * *

(4) Certified cost or pricing data, Certificates of Current Cost or Pricing Data, or data other than certified cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

* * * * *

PART 12—ACQUISITON OF COMMERCIAL ITEMS

12.102 [Amended]

■ 5. Amend section 12.102 in paragraph (f)(2)(ii) by removing "Cost or pricing" and adding "Certified cost or pricing" in its place.

12.504 [Amended]

■ 6. Amend section 12.504 in paragraph (a)(7) by removing "provide cost" and adding "provide certified cost" in its place.

PART 14—SEALED BIDDING

■ 7. Amend section 14.201–7 by removing from paragraph (a)(1)(ii) "of cost" and adding "of certified cost" in its place; and by revising paragraphs (b)(1) and (c)(1) to read as follows:

14.201–7 Contract clauses.

* * * * *

(b)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214–27, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at 15.403–4(a)(1).

* * * * *

(c)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at 15.403–4(a)(1).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 8. Amend section 15.204–5 by revising paragraph (b)(5) to read as follows:

15.204–5 Part IV—Representations and Instructions.

* * * * *

(b) * * *

(5) Certified cost or pricing data (see Table 15–2 of 15.408) or data other than certified cost or pricing data.

* * * * *

■ 9. Amend section 15.402 by revising the introductory text and paragraph (a) to read as follows:

15.402 Pricing policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer—

(1) Shall obtain certified cost or pricing data when required by 15.403–4, along with data other than certified cost or pricing data as necessary to establish a fair and reasonable price; or

(2) When certified cost or pricing data are not required by 15.403–4, obtain data other than certified cost or pricing data as necessary to establish a fair and reasonable price, generally using the following order of preference in determining the type of data required:

(i) No additional data from the offeror, if the price is based on adequate price competition, except as provided by 15.403–3(b).

(ii) Data other than certified cost or pricing data such as—

(A) Data related to prices (*e.g.,* established catalog or market prices, sales to non-governmental and governmental entities), relying first on data available within the Government; second, on data obtained from sources other than the offeror; and, if necessary, on data obtained from the offeror. When obtaining data from the offeror is necessary, unless an exception under 15.403–1(b)(1) or (2) applies, such data submitted by the offeror shall include, at a minimum, appropriate data on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(B) Cost data to the extent necessary for the contracting officer to determine a fair and reasonable price.

(3) Obtain the type and quantity of data necessary to establish a fair and

reasonable price, but not more data than is necessary. Requesting unnecessary data can lead to increased proposal preparation costs, generally extend acquisition lead time, and consume additional contractor and Government resources. Use techniques such as, but not limited to, price analysis, cost analysis, and/or cost realism analysis to establish a fair and reasonable price. If a fair and reasonable price cannot be established by the contracting officer from the analyses of the data obtained or submitted to date, the contracting officer shall require the submission of additional data sufficient for the contracting officer to support the determination of the fair and reasonable price.

* * * * *

■ 10. Amend section 15.403 by revising the section heading to read as follows:

15.403 Obtaining certified cost or pricing data.

* * * * *

■ 11. Amend section 15.403–1 by—

■ a. Revising the section heading, paragraph (a), the introductory text of paragraph (b), the heading to paragraph (c) introductory text, and paragraph (c)(3)(i);

■ b. Removing from paragraph (c)(3)(iii)(A) "of cost" and adding "of certified cost" in its place;

■ c. Revising paragraphs (c)(3)(iii)(B) and (c)(3)(iii)(C);

■ d. Removing from paragraph (c)(3)(iv) "for cost" and adding "for certified cost" in its place; and

■ e. Revising the introductory text of paragraph (c)(4).

The revised text reads as follows:

15.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a) Certified cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to certified cost or pricing data requirements.* The contracting officer shall not require certified cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require data other than certified cost or pricing data as defined in FAR 2.101 to support a determination of a fair and reasonable price or cost realism)—

* * * * *

(c) *Standards for exceptions from certified cost or pricing data requirements*—* * *

(3) * * *

(i) Any acquisition of an item that the contracting officer determines meets the commercial item definition in 2.101, or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for certified cost or pricing data. If the contracting officer determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, (*e.g.* the acquisition is not based on adequate price competition; the acquisition is not based on prices set by law or regulation; and the acquisition exceeds the threshold for the submission of certified cost or pricing data at 15.403–4(a)(1)) the contracting officer shall require submission of certified cost or pricing data.

* * * * *

(iii) * * *

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of certified cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining certified cost or pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial item are not exempt from the requirement for submission of certified cost or pricing data on the basis of the exemption provided for at 15.403–1(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining certified cost or pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

* * * * *

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of certified cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of certified cost or pricing data. For example, if certified cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated data, a waiver may be granted. If the HCA has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide certified cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the certified cost or pricing data threshold requires the submission of certified cost or pricing data unless—

* * * * *

■ 12. Revise section 15.403–2 to read as follows:

15.403–2 Other circumstances where certified cost or pricing data are not required.

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of certified cost or pricing data.

(b) Certified cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

■ 13. Revise section 15.403–3 to read as follows:

15.403–3 Requiring data other than certified cost or pricing data.

(a)(1) In those acquisitions that do not require certified cost or pricing data, the contracting officer shall—

(i) Obtain whatever data are available from Government or other secondary sources and use that data in determining a fair and reasonable price;

(ii) Require submission of data other than certified cost or pricing data, as defined in 2.101, from the offeror to the extent necessary to determine a fair and reasonable price (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)) if the contracting officer determines that adequate data from sources other than the offeror are not available. This includes requiring data from an offeror to support a cost realism analysis;

(iii) Consider whether cost data are necessary to determine a fair and reasonable price when there is not adequate price competition;

(iv) Require that the data submitted by the offeror include, at a minimum, appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price unless an exception under 15.403–1(b)(1) or (2) applies; and

(v) Consider the guidance in section 3.3, chapter 3, volume I, of the Contract Pricing Reference Guide cited at 15.404–1(a)(7) to determine the data an offeror shall be required to submit.

(2) The contractor's format for submitting the data should be used (see 15.403–5(b)(2)).

(3) The contracting officer shall ensure that data used to support price negotiations are sufficiently current to

permit negotiation of a fair and reasonable price. Requests for updated offeror data should be limited to data that affect the adequacy of the proposal for negotiations, such as changes in price lists.

(4) As specified in section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261), an offeror who does not comply with a requirement to submit data for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the HCA determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

(b) *Adequate price competition.* When adequate price competition exists (see 15.403–1(c)(1)), generally no additional data are necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional data are necessary to determine the reasonableness of price, the contracting officer shall, to the maximum extent practicable, obtain the additional data from sources other than the offeror. In addition, the contracting officer should request data to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see 15.404–1(b)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional data from sources other than the offeror, then the contracting officer shall require the offeror to submit data other than certified cost or pricing data to support further analysis (see 15.404–1). This data may include history of sales to non-governmental and governmental entities, cost data, or any other information the contracting officer requires to determine the price is fair and reasonable. Unless an exception under 15.403–1(b)(1) or (2) applies, the contracting officer shall require that the data submitted by the offeror include, at a minimum, appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price.

(2) *Limitations relating to commercial items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 254b(d)(2)).* (i) The contracting officer shall limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for data relating to commercial items to include only data that are in the form regularly maintained by the offeror as part of its commercial operations.

(iii) The Government shall not disclose outside the Government data obtained relating to commercial items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)).

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see 15.403–1(c)(3)(ii).

14. Amend section 15.403–4 by revising the section heading, and paragraphs (a), (b), and (c) to read as follows:

15.403–4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) The contracting officer shall obtain certified cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403–1(b) applies. However, if the contracting officer has reason to believe exceptional circumstances exist and has sufficient data available to determine a fair and reasonable price, then the contracting officer should consider requesting a waiver under the exception at 15.403–1(b)(4). The threshold for obtaining certified cost or pricing data is $700,000. Unless an exception applies, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish certified cost or pricing data (but see waivers at 15.403–1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.,* a $200,000 modification resulting from a reduction of $500,000 and an increase of $300,000 is a pricing adjustment exceeding $700,000). This requirement does not apply when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

(2) Unless prohibited because an exception at 15.403–1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain certified cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for certified cost or pricing data. The documentation shall include a written finding that certified cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The certified cost or pricing data and data other than certified cost or pricing data required by the contracting officer to determine that the price is fair and reasonable.

(2) A Certificate of Current Cost or Pricing Data, in the format specified in 15.406–2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is

as close as practicable to the date of agreement on price.

(c) If certified cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data as defined in 2.101 and must not be certified in accordance with 15.406–2.

* * * * *

■ 15. Revise section 15.403–5 to read as follows:

15.403–5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.

(a) Taking into consideration the policy at 15.402, the contracting officer shall specify in the solicitation (see 15.408 (l) and (m))—

(1) Whether certified cost or pricing data are required;

(2) That, in lieu of submitting certified cost or pricing data, the offeror may submit a request for exception from the requirement to submit certified cost or pricing data;

(3) Any requirement for data other than certified cost or pricing data; and

(4) The requirement for necessary preaward or postaward access to offeror's records.

(b)(1) *Format for submission of certified cost or pricing data.* When certification is required, the contracting officer may require submission of certified cost or pricing data in the format indicated in Table 15–2 of 15.408, specify an alternative format, or permit submission in the contractor's format (See 15.408(l)(1)), unless the data are required to be submitted on one of the termination forms specified in subpart 49.6.

(2) *Format for submission of data other than certified cost or pricing data.* When required by the contracting officer, data other than certified cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential for evaluating and determining that the price is fair and reasonable and the format has been described in the solicitation.

(3) *Format for submission of data supporting forward pricing rate agreements.* Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a form acceptable to the contracting officer.

■ 16. Amend section 15.404–1 by—

■ a. Removing from paragraphs (a)(2) and (a)(3) "when cost" and adding "when certified cost" in its place;

■ b. Revising paragraph (a)(4) and the second sentence of paragraph (a)(6);

■ c. Revising the heading of paragraph (b);

■ d. Adding three sentences to the end of paragraph (b)(1);

■ e. Revising the second sentence of paragraph (b)(2)(i), and paragraphs (b)(2)(ii) and (b)(2)(vii);

■ f. Revising paragraph (c)(1);

■ g. Removing from the introductory text of paragraph (c)(2)(i) "cost or" and adding "cost data or" in its place;

■ h. Revising paragraph (c)(2)(v);

■ i. Removing from paragraph (d)(3) "contractors" and adding "contractors' " in its place;

■ j. Removing from paragraph (e)(1) "may" and adding "should" in its place, and removing "equipment, real" and adding "equipment or real" in its place;

■ k. Adding paragraph (e)(3); and

■ l. Removing from the third sentence of paragraph (f)(2) "may" and adding "should" in its place.

The revised and added text reads as follows:

15.404–1 Proposal analysis techniques.

(a) * * *

(4) Cost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness or cost realism when a fair and reasonable price cannot be determined through price analysis alone for commercial or non-commercial items.

* * * * *

(6) * * * Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the certified cost or pricing data or data other than certified cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

* * * * *

(b) *Price analysis for commercial and non-commercial items.* (1) * * * Unless an exception from the requirement to obtain certified cost or pricing data applies under 15.403–1(b)(1) or (b)(2), at a minimum, the contracting officer shall obtain appropriate data, without certification, on the prices at which the same or similar items have previously been sold and determine if the data is adequate for evaluating the reasonableness of the price. Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor when there is no other means for determining a fair and reasonable price. Contracting officers shall obtain data other than certified cost or pricing data from the offeror or contractor for all acquisitions (including commercial item acquisitions), if that is the contracting officer's only means to determine the price to be fair and reasonable.

(2) * * *

(i) * * * Normally, adequate price competition establishes a fair and reasonable price (see 15.403–1(c)(1)).

(ii) Comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. This method may be used for commercial items including those "of a type" or requiring minor modifications.

(A) The prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.

(B) The prior price must be adjusted to account for materially differing terms and conditions, quantities and market and economic factors. For similar items, the contracting officer must also adjust the prior price to account for material differences between the similar item and the item being procured.

(C) Expert technical advice should be obtained when analyzing similar items, or commercial items that are "of a type" or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes.

* * * * *

(vii) Analysis of data other than certified cost or pricing data (as defined at 2.101) provided by the offeror.

* * * * *

(c) * * * (1) Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

* * * * *

(2) * * *

(v) Review to determine whether any cost data or pricing data, necessary to make the offeror's proposal suitable for negotiation, have not been either submitted or identified in writing by the offeror. If there are such data, the contracting officer shall attempt to obtain and use them in the negotiations or make satisfactory allowance for the incomplete data.

* * * * *

(e) * * *

(3) The contracting officer should request technical assistance in evaluating pricing related to items that are "similar to" items being purchased, or commercial items that are "of a type" or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes.

* * * * *

■ 17. Amend section 15.404–2 by—

■ a. Revising the section heading;

■ b. Removing from the second sentence in paragraph (a)(1) and the introductory text of paragraph (a)(2) "must" and adding "shall" in its place;

■ c. Revising the introductory text of paragraph (a)(2)(iii) and paragraph (a)(2)(iii)(F); and

■ d. Removing from the introductory text of paragraph (c)(1) "may" and adding "should" in its place.

The revised text reads as follows:

15.404–2 Data to support proposal analysis.

(a) * * *

(2) * * *

(iii) Information to help contracting officers determine commerciality and a fair and reasonable price, including—

* * * * *

(F) Identifying general market conditions affecting determinations of commerciality and a fair and reasonable price.

* * * * *

■ 18. Amend section 15.404–3 by—

■ a. Revising paragraphs (a) and (b)(3);

■ b. Revising the introductory text of paragraph (c);

■ c. Removing from the introductory text of paragraph (c)(1) "subcontractor(s), cost" and adding "subcontractor(s), certified cost" in its place;

■ d. Removing from paragraph (c)(1)(ii) "pertinent cost" and adding "pertinent certified cost" in its place;

■ e. Revising paragraph (c)(2);

■ f. Removing from paragraphs (c)(3) and (c)(4) "Subcontractor cost" and adding "Subcontractor certified cost" in its place; and

■ g. Removing from paragraph (c)(5) "Government cost" and adding "Government certified cost" in its place.

The revised text reads as follows:

15.404–3 Subcontract pricing considerations.

(a) The contracting officer is responsible for the determination of a fair and reasonable price for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's certified cost or pricing data.

(b) * * *

(3) When required by paragraph (c) of this subsection, submit subcontractor certified cost or pricing data to the Government as part of its own certified cost or pricing data.

(c) Any contractor or subcontractor that is required to submit certified cost or pricing data also shall obtain and analyze certified cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the certified cost or pricing data threshold, unless an exception in 15.403–1(b) applies to that action.

* * * * *

(2) The contracting officer should require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor certified cost or pricing data below the thresholds in paragraph (c)(1) of this subsection and data other than certified cost or pricing data that the contracting officer considers necessary for adequately pricing the prime contract.

* * * * *

■ 19. Amend section 15.406–2 by revising the introductory text of paragraph (a), and paragraph (e) to read as follows:

15.406–2 Certificate of current cost or pricing data.

(a) When certified cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

* * * * *

(e) If certified cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered certified cost or pricing data and shall not be certified in accordance with this subsection.

■ 20. Amend section 15.406–3 by revising paragraphs (a)(5) and (a)(6), and the second and third sentences of paragraph (a)(7) to read as follows:

15.406–3 Documenting the negotiation.

(a) * * *

(5) If certified cost or pricing data were not required in the case of any price negotiation exceeding the certified cost or pricing data threshold, the exception used and the basis for it.

(6) If certified cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the certified cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or noncurrent any certified cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or

(iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be certified cost or pricing data.

(7) * * * Where the determination of a fair and reasonable price is based on cost analysis, the summary shall address each major cost element. When determination of a fair and reasonable price is based on price analysis, the summary shall include the source and type of data used to support the determination.

* * * * *

■ 21. Amend section 15.407–1 by—

■ a. Revising the section heading;

■ b. Removing from the first sentence in paragraph (a) "any cost" and adding "any certified cost" in its place;

■ c. Revising paragraph (b)(1);

■ d. Removing from paragraphs (b)(2) and (b)(3)(ii) "the cost" and adding "the certified cost" in its place;

■ e. Revising paragraph (b)(3)(iv);

■ f. Removing from paragraph (b)(4) "understated cost" and adding "understated certified cost" in its place;

■ g. Removing from paragraph (b)(5)(ii) "the cost" and adding "the certified cost" in its place;

■ h. Removing from the first sentence in paragraph (b)(7)(iii) "defective cost" and adding "defective certified cost" in its place;

■ i. Removing from the first sentence in paragraph (e) "Defective Cost" each time it appears (twice) and adding "Defective Certified Cost" in its place; and

■ j. Removing from the first sentence in the introductory text of paragraph (f) and the first sentence of paragraph (f)(2) "subcontractor cost" and adding "subcontractor certified cost" in its place.

The revised text reads as follows:

15.407–1 Defective certified cost or pricing data.

* * * * *

(b)(1) If, after award, certified cost or pricing data are found to be inaccurate,

incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.408(b) and (c) and is set forth in the clauses at 52.215–10, Price Reduction for Defective Certified Cost or Pricing Data, and 52.215–11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in certified cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

* * * * *

(3) * * *

(iv) Certified cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

* * * * *

15.407–2 [Amended]

■ 22. Amend section 15.407–2 in paragraph (c)(1) by removing "requiring cost" and adding "requiring certified cost" in its place.

■ 23. Amend section 15.407–3 by revising paragraph (a) to read as follows:

15.407–3 Forward pricing rate agreements.

(a) When certified cost or pricing data are required, offerors are required to describe any forward pricing rate agreements (FPRAs) in each specific pricing proposal to which the rates apply and to identify the latest cost or pricing data already submitted in accordance with the FPRA. All data submitted in connection with the FPRA, updated as necessary, form a part of the total data that the offeror certifies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification. (See the Certificate of Current Cost or Pricing Data at 15.406–2.)

* * * * *

■ 24. Amend section 15.408 by—

■ a. Revising paragraphs (b), (c), (d), (e), and (g);

■ b. Removing from paragraph (j) "that cost" and adding "that certified cost" in its place;

■ c. Revising paragraph (k), the introductory text of paragraph (l), and paragraphs (l)(1), (l)(4), and (m); and

■ d. In Table 15–2, which follows paragraph (n), by—

■ 1. Revising the table heading, the introductory text, and Notes 1 and 2;

■ 2. Revising the first sentence of paragraph B., and paragraph C. of the *I. General Instructions;* and

■ 3. Revising the introductory text of paragraph A. and paragraph A.(2) of the *II. Cost Elements.*

The revised text reads as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

(b) *Price Reduction for Defective Certified Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–10, Price Reduction for Defective Certified Cost or Pricing Data, in solicitations and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor (see 15.403–4).

(c) *Price Reduction for Defective Certified Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications, in solicitations and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor (see 15.403–4) for the pricing of contract modifications, and the clause prescribed in paragraph (b) of this section has not been included.

(d) *Subcontractor Certified Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215–12, Subcontractor Certified Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included.

(e) *Subcontractor Certified Cost or Pricing Data—Modifications.* The contracting officer shall insert the clause at 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included.

* * * * *

(g) *Pension Adjustments and Asset Reversions.* The contracting officer shall insert the clause at 52.215–15, Pension Adjustments and Asset Reversions, in solicitations and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

* * * * *

(k) *Notification of Ownership Changes.* The contracting officer shall insert the clause at 52.215–19, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2.

(l) *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.* Considering the hierarchy at 15.402, the contracting officer shall insert the provision at 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception from the requirement to submit certified cost or pricing data. The contracting officer shall—

(1) Use the provision with its Alternate I to specify a format for certified cost or pricing data other than the format required by Table 15–2 of this section;

* * * * *

(4) Replace the basic provision with its Alternate IV if certified cost or pricing data are not expected to be required because an exception may apply, but data other than certified cost or pricing data will be required as described in 15.403–3.

(m) *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.* Considering the hierarchy at 15.402, the contracting officer shall insert the clause at 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception from the requirement to submit certified cost or pricing data. The contracting officer shall—

(1) Use the clause with its Alternate I to specify a format for certified cost or pricing data other than the format required by Table 15–2 of this section;

(2) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic clause with its Alternate IV if certified cost or pricing data are not expected to be required because an exception may apply, but data other than certified cost or pricing data will be required as described in 15.403–3.

* * * * *

Table 15–2—Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data Are Required

This document provides instructions for preparing a contract pricing proposal when certified cost or pricing data are required.

Note 1: There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate certified cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later data come into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the data relate to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2: By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual data (regardless of form or whether the data are specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

* * * * *

B. In submitting your proposal, you must include an index, appropriately referenced, of all the certified cost or pricing data and information accompanying or identified in the proposal. * * *

C. As part of the specific information required, you must submit, with your proposal—

(1) Certified cost or pricing data (as defined at FAR 2.101). You must clearly identify on your cover sheet that certified cost or pricing data are included as part of the proposal.

(2) Information reasonably required to explain your estimating process, including—

(i) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(ii) The nature and amount of any contingencies included in the proposed price.

* * * * *

II. Cost Elements

* * * * *

A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when certified cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own certified cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403–4. Submit the subcontractor certified cost or pricing data and data other than certified cost or pricing data as part of your own certified cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit certified cost or pricing data.

* * * * *

(2) *All Other.* Obtain certified cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403–4 and not otherwise exempt, in accordance with FAR 15.403–1(b) (*i.e.,* adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of certified cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either $12.5 million or more, or both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. Also submit any information reasonably required to explain your estimating process (including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price). The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor certified cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the certified cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's certified cost or pricing data is required as described in this paragraph, it must be included as part of your own certified cost or pricing data. You must also submit any data other than certified cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

* * * * *

PART 16—TYPES OF CONTRACTS

16.202–2 [Amended]

■ 25. Amend section 16.202–2 by removing from paragraph (b) "valid cost" and adding "valid certified cost" in its place.

■ 26. Amend section 16.203–2 by revising paragraph (b) to read as follows:

16.203–2 Application.

* * * * *

(b) In contracts that do not require submission of certified cost or pricing data, the contracting officer shall obtain adequate data to establish the base level from which adjustment will be made and may require verification of data submitted.

■ 27. Amend section 16.603–2 by revising the first sentence of paragraph (c) to read as follows:

16.603–2 Application.

* * * * *

(c) Each letter contract shall, as required by the clause at 52.216–25, Contract Definitization, contain a negotiated definitization schedule including (1) dates for submission of the contractor's price proposal, required certified cost or pricing data and data

other than certified cost or pricing data; and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which shall be the earliest practicable date for definitization. * * *

* * * * *

■ 28. Amend section 16.603–4 by revising the second sentence of paragraph (b)(3) to read as follows:

16.603–4 Contract clauses.

* * * * *

(b) * * *

(3) * * * If at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.403–1 for not requiring submission of certified cost or pricing data, the words "and certified cost or pricing data in accordance with FAR 15.408, Table 15–2 supporting its proposal" may be deleted from paragraph (a) of the clause. * * *

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 29. Amend section 19.705–4 by—

■ a. Removing from the introductory text and paragraph (a) introductory text "must" and adding "shall" in its place; and

■ b. Revising paragraph (d)(3) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(3) Ensure that the subcontracting goals are consistent with the offeror's certified cost or pricing data or data other than certified cost or pricing data.

* * * * *

■ 30. Amend section 19.806 by revising the second and third sentences of paragraph (a) to read as follows:

19.806 Pricing the 8(a) contract.

(a) * * * If required by subpart 15.4, the SBA shall obtain certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine the proposed price to be fair and reasonable in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

* * * * *

19.807 [Amended]

■ 31. Amend section 19.807 by removing from paragraph (b) "including cost" and adding "including certified cost" in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.202–5 [Amended]

■ 32. Amend section 27.202–5 by removing from paragraph (a)(1)(i) "which cost" and adding "which certified cost" in its place.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201–5 [Amended]

■ 33. Amend section 30.201–5 in paragraph (c)(6) by removing "Whether cost" and adding "Whether certified cost" in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

■ 34. Amend section 31.205–6 in paragraph (j)(3)(i)(B), the second sentence of paragraph (j)(3)(ii), and the second sentence of paragraph (o)(5) by removing "which cost" and adding "which certified cost" in its place.

PART 32—CONTRACT FINANCING

32.601 [Amended]

■ 35. Amend section 32.601 in paragraph (b)(2) by removing "defective cost" and adding "defective certified cost" in its place.

32.607–2 [Amended]

■ 36. Amend section 32.607–2 in paragraph (g)(3) by removing "Defective Cost" and adding "Defective Certified Cost" in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.207 [Amended]

■ 37. Amend section 33.207 in paragraph (d) by removing "regarding cost" and adding "regarding certified cost" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 38. Amend section 36.214 by—

■ a. Revising the introductory text of paragraph (b); and

■ b. Removing from paragraph (b)(1) "of cost" and adding "of certified cost" in its place.

■ The revised text reads as follows:

36.214 Special procedures for price negotiation in construction contracting.

* * * * *

(b) The contracting officer shall evaluate proposals and associated certified cost or pricing data and data other than certified cost or pricing data and shall compare them to the Government estimate.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.705–1 [Amended]

■ 39. Amend section 42.705–1 in paragraph (b)(5)(iii) by giving separate indention to paragraphs (b)(5)(iii)(A), (B), (C), and (D) and by removing from (b)(5)(iii)(D) "of cost" and adding "of certified cost" in its place.

■ 40. Amend section 42.1304 by revising paragraph (d) to read as follows:

42.1304 Government delay of work.

* * * * *

(d) The contracting officer shall retain in the file a record of all negotiations leading to any adjustment made under the clause, and related certified cost or pricing data, or data other than certified cost or pricing data.

■ 41. Amend section 42.1701 by—

■ a. In paragraph (b), revising the first sentence, and removing the last sentence; and

■ b. Revising the second sentence of paragraph (c). The revised text reads as follows:

42.1701 Procedures.

* * * * *

(b) The ACO shall obtain the contractor's forward pricing rate proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission (but see 15.407–3(c)). * * *

(c) * * * The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data used to support the FPRA.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 42. Amend section 44.202–2 by revising paragraph (a)(8) to read as follows:

44.202–2 Considerations.

(a) * * *

(8) Has the contractor performed adequate cost or price analysis or price comparisons and obtained certified cost or pricing data and data other than certified cost or pricing data?

* * * * *

■ 43. Amend section 44.303 by revising paragraph (c) to read as follows:

44.303 Extent of review.

* * * * *

(c) Pricing policies and techniques, including methods of obtaining certified cost or pricing data, and data other than certified cost or pricing data;

* * * * *

44.305–3 [Amended]

■ 44. Amend section 44.305–3 in paragraph (a)(1) by removing "Cost" and adding "Certified cost" in its place.

PART 45—GOVERNMENT PROPERTY

45.104 [Amended]

■ 45. Amend section 45.104 by removing from paragraph (a)(4) "of cost" and adding "of certified cost" in its place.

PART 49—TERMINATION OF CONTRACTS

49.603–1 [Amended]

■ 46. Amend section 49.603–1 in paragraph (b)(7)(x) of the agreement by removing "defective cost" and adding "defective certified cost" in its place.

49.603–2 [Amended]

■ 47. Amend section 49.603–2 in paragraph (b)(8)(vii) of the agreement by removing "defective cost" and adding "defective certified cost" in its place.

49.603–3 [Amended]

■ 48. Amend section 49.603–3 in paragraph (b)(7)(xv) of the agreement by removing "defective cost" and adding "defective certified cost" in its place.

49.603–4 [Amended]

■ 49. Amend section 49.603–4 in paragraph (b)(4)(viii) of the agreement by removing "defective cost" and adding "defective certified cost" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 50. Amend section 52.214–26 by—

■ a. Revising the date of the clause;

■ b. Revising the introductory text of paragraph (b); and

■ c. Removing from paragraph (e) "of cost" and adding "of certified cost" in its place.

The revised text reads as follows:

52.214–26 Audit and Records—Sealed Bidding.

* * * * *

Audit and Records—Sealed Bidding (Oct 2010)

* * * * *

(b) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

* * * * *

■ 51. Amend section 52.214–27 by—

■ a. Revising the section heading;

■ b. Revising the clause heading and date of the clause;

■ c. Removing from paragraph (a) "of cost" and adding "of certified cost" in its place;

■ d. Removing from paragraph (b) "furnished cost" and adding "furnished certified cost" in its place; removing "Contractor cost" and adding "Contractor certified cost" in its place; and removing "(a) above" and adding "(a) of this clause" in its place;

■ e. Removing from paragraph (c) "(b) above" and adding "(b) of this clause" in its place, and removing "defective cost" and adding "defective certified cost" in its place;

■ f. Removing from paragraph (d)(1)(i) "current cost" and adding "current certified cost" in its place; and removing from paragraph (d)(1)(ii) "the cost" and adding "the certified cost" in its place;

■ g. Removing from paragraph (d)(2)(i)(B) "the cost" and adding "the certified cost" in its place; and

■ h. Removing from paragraph (e)(2) "submitted cost" and adding "submitted certified cost" in its place;

The revised text reads as follows:

52.214–27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding (Oct 2010)

* * * * *

■ 52. Amend section 52.214–28 by—

■ a. Revising the section heading;

■ b. Revising the clause heading and date of the clause;

■ c. Giving separate indention to paragraphs (a)(1) and (2) and by removing from paragraph (a)(1) "of cost" and adding "of certified cost" in its place;

■ d. Revising paragraph (b); and

■ e. Removing from paragraph (d) "of cost" and adding "of certified cost" in its place.

The revised text reads as follows:

52.214–28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding (Oct 2010)

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4(a)(1), on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–1(b) applies.

* * * * *

■ 53. Amend section 52.215–2 by—

■ a. Revising the date of the clause;

■ b. Revising the introductory text of paragraph (c); and

■ c. Removing from introductory text of paragraph (g) "paragraph (a)" and adding "paragraph (g)" in its place; and removing from paragraph (g)(2) "which cost" and adding "which certified cost" in its place.

The revised text reads as follows:

52.215–2 Audit and Records-Negotiation.

* * * * *

Audit and Records—Negotiation (Oct 2010)

* * * * *

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

* * * * *

■ 54. Amend section 52.215–9 by—

■ a. Revising the date of *Alternate I* and paragraph (d)(1); and

■ b. Revising the date of *Alternate II* and paragraph (d)(1).

The revised text reads as follows:

52.215–9 Changes or Additions to Make-or-Buy Program.

* * * * *

Alternate I (Oct 2010). * * *

(d) * * *

(1) Support its proposal with certified cost or pricing data in accordance with FAR 15.408, Table 15–2 when required by FAR 15.403, and data other than certified cost or pricing data, to permit evaluation; and

* * * * *

Alternate II (Oct 2010). * * *

(d) * * *

(1) Support its proposal with certified cost or pricing data in accordance with FAR 15.408, Table 15–2, when required by FAR 15.403, and data other than certified cost or pricing data, to permit evaluation; and

* * * * *

■ 55. Amend section 52.215–10 by—
■ a. Revising the section heading;
■ b. Revising the clause heading and date of the clause;
■ c. Removing from paragraph (a)(1) "furnished cost" and adding "furnished certified cost" in its place, and removing from paragraph (a)(2) "Contractor cost" and adding "Contractor certified cost" in its place;
■ d. Revising paragraph (b);
■ e. Removing from paragraph (c)(1)(i) "current cost" and adding "current certified cost" in its place, and removing from paragraphs (c)(1)(ii) and (c)(2)(i)(B) "the cost" and adding "the certified cost" in its place; and
■ f. Removing from paragraph (d)(2) "submitted cost" and adding "submitted certified cost" in its place.

The revised text reads as follows:

52.215–10 Price Reduction for Defective Certified Cost or Pricing Data.

* * * * *

Price Reduction for Defective Certified Cost or Pricing Data (Oct 2010)

* * * * *

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

* * * * *

■ 56. Amend section 52.215–11 by—
■ a. Revising the section heading;
■ b. Revising the clause heading and date of the clause;
■ c. Removing from paragraph (a) "of cost" and adding "of certified cost" in its place;
■ d. Removing from paragraph (b) "furnished cost" and adding "furnished certified cost" in its place; and removing "Contractor cost" and adding "Contractor certified cost" in its place;
■ e. Revising paragraph (c);
■ f. Removing from paragraph (d)(1)(i) "current cost" and adding "current certified cost" in its place; and removing from paragraphs (d)(1)(ii) and (d)(2)(i)(B) "the cost" and adding "the certified cost" in its place; and
■ g. Removing from paragraph (e)(2) "submitted cost" and adding "submitted certified cost" in its place.

The revised text reads as follows:

52.215–11 Price Reduction for Defective Certified Cost or Pricing Data—Modifications.

* * * * *

Price Reduction for Defective Certified Cost or Pricing Data—Modifications (Oct 2010)

* * * * *

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

* * * * *

■ 57. Amend section 52.215–12 by—
■ a. Revising the section heading;
■ b. Revising the clause heading and date of the clause;
■ c. Revising paragraph (a);
■ d. Removing from the introductory text of paragraph (c) and paragraph (c)(1) "of cost" and adding "of certified cost" in its place; and
■ e. Removing from paragraph (c)(2) "Subcontractor Cost" and adding "Subcontractor Certified Cost" in its place.

The revised text reads as follows:

52.215–12 Subcontractor Certified Cost or Pricing Data.

* * * * *

Subcontractor Certified Cost or Pricing Data (Oct 2010)

* * * * *

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–1 applies.

* * * * *

■ 58. Amend section 52.215–13 by—
■ a. Revising the section heading;
■ b. Revising the clause heading and date of the clause;
■ c. Removing from paragraph (a)(1) "of cost" and adding "of certified cost" in its place;
■ d. Revising paragraph (b); and
■ e. Removing from paragraph (d) "of cost" and adding "of certified cost" in its place;

The revised text reads as follows:

52.215–13 Subcontractor Certified Cost or Pricing Data—Modifications.

* * * * *

Subcontractor Certified Cost or Pricing Data—Modifications (Oct 2010)

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–1 applies.

* * * * *

52.215–14 [Amended]

■ 59. Amend section 52.215–14 by—
■ a. Revising the date of the clause to read "(Oct 2010)"; and
■ b. Removing from the last sentence of paragraph (a) "of cost" and adding "of certified cost" in its place.

52.215–15 [Amended]

■ 60. Amend section 52.215–15 by revising the date of the clause to read "(Oct 2010)"; and removing from paragraph (b)(2) and the second sentence of paragraph (c) "which cost"

and adding "which certified cost" in its place.

■ 61. Amend section 52.215–20 by—

■ a. Revising the section heading;

■ b. Revising the provision heading and date of the provision;

■ c. Revising the introductory text of paragraph (a); and removing from the first sentence of paragraph (a)(1) "submitting cost" and adding "submitting certified cost" in its place;

■ d. Revising the introductory text of paragraph (b) and paragraph (b)(1);

■ e. Revising *Alternate I;* and

■ f. Revising the date of *Alternate IV* and paragraphs (a) and (b).

The revised text reads as follows:

52.215–20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (Oct 2010)

(a) *Exceptions from certified cost or pricing data.*

* * * * *

(b) *Requirements for certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The offeror shall prepare and submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

* * * * *

Alternate I (Oct 2010). As prescribed in 15.408(1) (and see 15.403–5(b)(1)), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in the following format: *[Insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.408, Table 15–2, Note 2. The description may be inserted at the time of issuing the solicitation, or the Contracting Officer may specify that the offeror's format will be acceptable, or the description may be inserted as the result of negotiations.]*

* * * * *

Alternate IV (Oct 2010). * * *

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: *[Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]*

■ 62. Amend section 52.215–21 by—

■ a. Revising the section heading;

■ b. Revising the clause heading and date of the clause;

■ c. Revising the introductory text of paragraph (a); and removing from the introductory text of paragraph (a)(1) "submitting cost" and adding "submitting certified cost" in its place;

■ d. Removing from paragraph (a)(1)(ii)(A)(*1*) "from cost" and adding "from certified cost" in its place;

■ e. Revising the introductory text of paragraph (b) and paragraph (b)(1);

■ f. Revising *Alternate I;* and

■ g. Revising the date of *Alternate IV* and paragraphs (a) and (b).

The revised text reads as follows:

52.215–21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications (Oct 2010)

(a) *Exceptions from certified cost or pricing data.*

* * * * *

(b) *Requirements for certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

* * * * *

Alternate I (Oct 2010). As prescribed in 15.408(m) and 15.403–5(b)(1), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments prepared in the following format: *[Insert description of the data and format that are required and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.408, Table 15–2, Note 2. The description may be inserted at the time of issuing the solicitation, or the Contracting Officer may specify that the offeror's format will be acceptable, or the description may be inserted as the result of negotiations.]*

* * * * *

Alternate IV (Oct 2010). * * *

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: *[Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]*

■ 63. Amend section 52.216–25 by—

■ a. Revising the date of the clause;

■ b. Revising paragraph (a); and

■ c. Removing from the paragraph (b) "*and cost*" and adding "*and certified cost*" in its place.

The revised text reads as follows:

52.216–25 Contract Definitization.

* * * * *

Contract Definitization (Oct 2010)

(a) A ____ *[insert specific type of contract]* definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a ____ *[insert specific type of proposal (e.g., fixed-price or cost-and-fee)]* proposal, including data other than certified cost or pricing data, and certified cost or pricing data, in accordance with FAR 15.408, Table 15–2, supporting its proposal.

* * * * *

52.230–2 [Amended]

■ 64. Amend section 52.230–2 by revising the date of the clause to read "(Oct 2010)"; and removing from the first sentences of paragraphs (a)(3) and (d) "submitted cost" and adding "submitted certified cost" in its place.

52.230–5 [Amended]

■ 65. Amend section 52.230–5 by revising the date of the clause to read "(Oct 2010)"; and removing from the first sentence of paragraph (a)(3) and the introductory text of paragraph (d) "submitted cost" and adding "submitted certified cost" in its place.

52.232–17 [Amended]

■ 66. Amend section 52.232–17 by revising the date of the clause to read "(Oct 2010)"; and removing from the first sentence of paragraph (a) "Defective Cost" and adding "Defective Certified Cost" in its place.

52.244–2 [Amended]

■ 67. Amend section 52.244–2 by—

■ a. Revising the date of the clause to read "(Oct 2010)";
■ b. Removing from paragraph (e)(1)(v) "accurate cost" and adding "accurate certified cost" in its place;
■ c. Removing from paragraph (e)(1)(vii)(C) "reason cost" and adding "reason certified cost" in its place; and
■ d. Removing from paragraphs (e)(1)(vii)(D) and (e)(1)(vii)(E) "subcontractor's cost" and adding "subcontractor's certified cost" in its place.

[FR Doc. 2010–21026 Filed 8–27–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 25, and 52

[FAC 2005–45; FAR Case 2009–008; Item III; Docket 2009–0008, Sequence 1]

RIN 9000–AL22

Federal Acquisition Regulation; American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the American Recovery and Reinvestment Act of 2009 (Recovery Act) with respect to the "Buy American—Recovery Act" provision, section 1605 in Division A.

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

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after the effective date of this rule. Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts to include the appropriate FAR clause for future work, if Recovery Act funds will be used. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for award of any work that uses Recovery Act funds.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–45, FAR case 2009–008.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements the unique "Buy American—Recovery Act" provision, section 1605 of the Recovery Act, by revising FAR subpart 25.6, and related provisions and clauses at FAR part 52, with conforming changes to FAR subparts 2.1, 5.2, 25.0, and 25.11. An interim rule was published in the **Federal Register** at 74 FR 14623, March 31, 2009. The public comment period ended June 1, 2009.

As required by section 1605, the final rule makes it clear that there will be full compliance with U.S. obligations under all international trade agreements when undertaking construction covered by such agreements with Recovery Act funds. The new required provisions and clauses implement U.S. obligations under our trade agreements in the same way as they are currently implemented in non-Recovery Act construction contracts. The Caribbean Basin countries are excluded from the definition of "Recovery Act designated country," because the treatment provided to them is not as a result of a U.S. international obligation.

B. Discussion and Analysis

The Regulatory Secretariat received 35 responses, but 2 responses lacked attached comments and 1 response appeared unrelated to the case. The responses included multiple comments on a wide range of issues addressed in the interim rule. Each issue is discussed by topic in the following sections.

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1. Comments on Section 1605 of the Recovery Act

Comments: Although the respondents expressed general support for the goals of the Recovery Act to stimulate the U.S. economy, many were concerned about the Recovery Act Buy American restrictions of section 1605. For example:

Several entities representing other countries objected to the potential restrictions on trade. They alleged that the Recovery Act Buy American requirement in section 1605 is not in conformity with the U.S. pledge to refrain from raising new barriers in the framework of the Summit on Financial Markets and the World Economy, November 2008, and the G20 pledge, April 2009. They alleged that it will have a negative impact on the world trade and economy. One respondent stated that it is not rational for the U.S. to take trade protection actions such as the "Buy American—Recovery Act" provision, because it will not be useful for the American and global economy in promoting recovery from the current downturn. Another respondent stated that, to the extent 1605 imposes more restrictive requirements than previously existed, it represents a new barrier to trade in goods between the United States and Canada. One respondent found several aspects of section 1605 problematic because of their "inherent lack of clarity."

Some United States industry associations also had concerns about section 1605. One objected that the real-life burdens of complying with these country-of-origin requirements cannot be overstated. This respondent concluded that, where the U.S. Government places a premium on

promoting its important socio-economic goals, this requires companies interested in selling in the Federal marketplace to segregate their inventories based on country of origin and implement costly compliance regimes. Another respondent noted a risk that the Recovery Act Buy American provisions may have numerous unintended consequences on the United States and harm American workers and companies and the global economy. A third respondent commented that "Congress' well-meaning intentions, like all protectionist measures, could inadvertently hurt the downstream U.S. users."

Response: Comments on the merits of section 1605 of the Recovery Act are outside the scope of this case, because the Councils cannot change the law.

This final rule is focused on the optimal implementation of section 1605 in the FAR, *i.e.,* the Councils have attempted to find the balance between domestic-sourcing requirements and simplicity and clarity of implementation, so that the rule does not become so onerous that it does more harm than good to U.S. industry.

2. Applicability of Section 1605 of the Recovery Act

a. Relation to the Buy American Act

There are two main issues raised by respondents with regard to the applicability of the Buy American Act in contracts funded with Recovery Act funds.

i. Does the Buy American Act apply to manufactured construction material used in Recovery Act projects?

Comments: A few respondents contended that the Buy American Act still applies to goods covered by section 1605 of the Recovery Act—that both standards must be met. These respondents objected that the interim rule deviated from existing law and regulations that should still govern the purchase of goods covered by the Recovery Act. According to these respondents, any final rule must, at a minimum, preserve the basic requirements of assembly in the United States and the 51 percent domestic component rule, because the Buy American Act still applies. Another respondent claimed that this rule cannot waive the Buy American Act's component test without additional authority.

Response: The Recovery Act sets out specific domestic source restrictions for iron, steel, and manufactured goods incorporated into Recovery Act construction projects. In many ways, these restrictions mirror the Buy American Act, but there are specific differences (no component test, different standards for unreasonable cost, no exception for impracticable, etc.). The Councils and OMB determined that it was reasonable to interpret section 1605 as including all of the "Buy American—Recovery Act" restrictions that Congress intended to apply to iron, steel, and manufactured goods covered by the Recovery Act, *i.e.,* these goods are not also covered by the Buy American Act. Since Congress was clearly aware of the Buy American Act when creating the Recovery Act domestic source restrictions and exceptions, if Congress had wanted the component test or other aspects of the Buy American Act to apply, they would have included them. Congress incorporated those aspects of the Buy American Act that they wanted to apply, and excluded or modified those aspects that they did not want to apply. The Councils have determined that section 1605 of the Recovery Act supersedes the Buy American Act with regard to the acquisition of manufactured construction materials used on a project funded with Recovery Act funds. Therefore, the component test does not apply to construction material used in projects funded by the Recovery Act.

ii. Does the Buy American Act apply to unmanufactured construction material used in Recovery Act projects?

Comments: Several non-U.S. respondents objected that the interim rule applies the Buy American Act to unmanufactured construction material. One of them stated that the interim rule has expanded the scope of the Recovery Act by way of arbitrary interpretation and constitutes an unjustified limitation of the use of foreign unmanufactured construction materials, given that the use of foreign unmanufactured construction materials is not prohibited by the Recovery Act. A respondent believed that "statutory authority does not exist to extend the provisions required by section 1605 to unmanufactured goods" and asked that this be struck from the final rule. Another objected that the additional 6 percent evaluation factor applied to unmanufactured construction material is only stipulated in the FAR, and should not be permitted under the spirit of the "G20 Statement."

Response: Section 1605 did not address unmanufactured construction material. The interim rule coverage of unmanufactured construction material is not based on extending the coverage of section 1605, but on continuing to apply the Buy American Act to that material not covered by the Recovery Act.

b. Applicability to Construction Projects/Contracts

i. How To Identify a "Construction" Contract

Comments: A respondent wanted to know whether the contracting agency will be required to affirmatively stipulate whether a contract is considered a "construction" contract and require that this language be flowed down to subcontractors.

Response: Construction contracts are easily identifiable by the presence of construction provisions and clauses in the solicitation and contract, such as the clauses prescribed in FAR subpart 36.5 as well as the Buy American Act provisions and clauses for construction contracts in FAR clauses 52.225–9 through 52.225–12 or now the Recovery Act Buy American, FAR provisions at 52.225–21 through 52.225–24. It is the responsibility of the prime contractor to comply with contract clauses and impose on subcontractors whatever conditions are necessary to enable the prime contractor to meet the contract requirements.

ii. Use of terms "contract" and "project"

Comments: Two respondents contended that the interim rule is unclear in several places regarding the scope of coverage because the terms "projects" and "contracts" appear to be used interchangeably.

- FAR 25.602(a) states that "None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance or repair of a public building or public work * * *"
- FAR 25.603(c), implementing the Trade Agreements Act, states that "For construction contracts with an estimated acquisition value * * *"
- FAR 52.225–21(b)(2) states, "The contractor shall use only domestic construction material in performing this contract * * *."

Response: Construction "project" is often a more inclusive term than construction "contract." Large construction projects may involve more than one construction contract. The term "project" may also be used to denote a segment of a contract, if the funds are clearly segregated. To clarify this meaning, the Councils have added a statement in the policy section at FAR 25.602 and also clarified in the provision and clause prescriptions at FAR 25.1102(e)(2) that the contract must indicate if the Recovery Act provision

and clause only apply to certain line items in the contract.

The scope of this rule is established, in accordance with section 1605(a) of the Recovery Act, as applying restrictions to "a project for the construction, alteration, maintenance, or repair of a public building or public work." The final rule has clarified at FAR 25.602 that the agency determines the scope of the project and conveys this to the contractor through the specified applicability of the Recovery Act provision and clause in the contract.

However, the statute can only be implemented through clauses that go into a specific construction contract. Each contract can only impose requirements applicable to that particular contract. Therefore, the term "contract" is used when the interim rule is addressing a requirement that is specific to a contractor or contract, particularly as used in the provisions and clauses.

c. Applicability to Construction Materials or Supplies

i. Equating "Manufactured Goods Used in the Project" to "Construction Material"

Comments: There were many concerns about the interpretation in the interim rule of the applicability of section 1605 to manufactured goods, namely that the rule equates manufactured goods used in the project to construction material.

A respondent contended that the narrow interpretation of manufactured goods "ignores common sense and well-established precedent." According to the respondent, the rule equates manufactured goods to construction material and limits the applicability to construction materials that are incorporated into a public building or work.

Another respondent stated that the rule should apply to all manufactured goods—not just construction materials, contending that manufactured goods "used in the project" means "all hazmat suits, tool belts, masks, tarps, covers, safety straps, construction clothing, gloves, *etc.* purchased by the contractor as part of doing the work."

A respondent stated that regulations for public works projects must require that all manufactured goods, including textile products, must be manufactured in the United States, as intended by the Recovery Act.

On the other hand, a respondent expressed concern that the perceived requirement that all manufactured products on the construction site are covered is proving disastrous for American equipment manufacturers. This respondent stated that construction equipment manufacturers provide the machines that improve operations and reduce costs of any infrastructure project. The process to verify and prove 100 percent U.S. content of each piece of equipment is onerous.

Some respondents expressed support for the Councils' approach in FAR subpart 25.6 of treating iron, steel, and manufactured goods as another way of describing "construction material: As that term has been understood and applied with respect to 41 U.S.C. 10a–10d in FAR subpart 25.2 and its associated clauses."

Response: One of the goals in implementation of the Recovery Act was to make the definitions and procedures as close to existing FAR definitions and procedures as possible, except where differences are required by the Recovery Act.

Therefore, when applied to a construction contract, FAR subpart 25.6 and the associated construction clauses use the standard definition of "construction material" at FAR 25.003 that is familiar to contractors and contracting officers. There is a long series of Government Accountability Office (GAO) decisions and case law that then can be applied without completely starting over. For use in a construction contract, the Councils interpreted "manufactured goods used in the project" to be comparable to the long-standing definition of "construction material" as an "article, material, or supply brought to the construction site by the contractor or a subcontractor for incorporation into the building or work." Review of the existing case law clarifies the many possible nuances relating to construction material and its delivery to the site. Rather than "ignoring well established precedent," the Councils relied on well-established precedent. The FAR has never applied domestic source restrictions to such items as hazmat suits, tool belts, masks, tarps, covers, safety straps, construction clothing, and gloves, which are used in a construction project by the contractor but are not incorporated into the construction project. Further, the interim rule did not apply the Recovery Act Buy American requirement of section 1605 to equipment used at the construction site, because it is not incorporated into the construction project. These items are not deliverables to the Government, but remain the property of the contractor. The contractor may already have purchased these items before commencement of the contract, and may continue to use them on subsequent contracts. Therefore, their purchase is not generally subject to restrictions in the terms of the contract.

ii. Applicability to Supplies Purchased by the Government

Comment: One respondent expressed concern that the interim rule, in the definition of construction material, stated that manufactured goods that are purchased by the Government are supplies and, therefore, excluded from the definition of manufactured goods, as used in section 1605.

Response: The statement that items purchased by the Government are supplies, not construction material, has been a standard part of the definition of construction material for many years. It is a true statement that items purchased by the Government are not "construction material" as it is defined in the FAR. However, section 1605 does require that all manufactured goods incorporated into the project must be produced in the United States, whether purchased by the contractor as construction material or purchased by the Government as an item of supply. If the Government directly purchases manufactured goods and delivers them to the site for incorporation into the project, such material must comply with the "Buy American—Recovery Act" restriction of section 1605, even though it is not construction material as defined in the FAR. The final rule clarifies this in the policy section. Furthermore, for added clarity, the final rule deletes from the definition of "construction material" in FAR clauses 52.225–21 and 52.225–23 the phrase about items purchased by the Government not being construction material, because it appears to cause confusion and because the information about actions the Government may take is not pertinent to the contractor for performance of the construction contract.

iii. Contractor-Purchased Supplies for Delivery to the Government

Comments: A respondent requested that the final rule clarify that, to the extent purchases of supplies made with Recovery Act funds are not covered as construction material, they are subject to normal Buy American Act/Trade Agreements Act requirements.

Response: Contractor-purchased supplies that are for delivery to the Government, not for incorporation into the project, continue to be covered by the pre-existing FAR regulations on the Buy American Act and trade agreements, as applicable. This rule only applies to construction contracts funded with Recovery Act funds or

supplies purchased by the Government for incorporation into the project.

d. Manufacture vs. Substantial Transformation or Tariff Shift

There were many comments on the issue of manufacture and substantial transformation.

i. Buy American Act and Substantial Transformation

Comments: Several respondents believed that the Buy American Act includes a requirement for substantial transformation. One respondent stated that the rule should use the "long-standing definition" of a domestic manufactured good, *i.e.,* final substantial transformation must occur in the United States. Another respondent stated that the Buy American Act of 1933 includes a substantial transformation test. A respondent also stated that the Buy American Act requires substantial transformation in the United States. The respondent was concerned that the interim rule only requires assembly in the United States.

Response: Whether or not the Buy American Act requires "manufacture" or "substantial transformation" is not directly relevant to this rule, but only might be used as a matter of comparison for interpretation of section 1605. The Councils have determined that the Buy American Act does not apply to manufactured construction material. Many of the respondents, whether contending that the Buy American Act still applies or using the Buy American Act for purposes of comparison and interpretation, have misinterpreted the Buy American Act. The Buy American Act includes the requirement for domestic manufactured goods to be "manufactured" in the United States. This term has been used consistently in the FAR as the first prong of the test for domestic manufactured end products and construction material. There is no substantial transformation test included in the Buy American Act. The term "substantial transformation" only comes into the FAR to implement trade agreements. The rule of origin for designated country end products and designated country construction material requires products to be wholly the product of, or be "substantially transformed" in the designated country. Even under trade agreements, there is no requirement for substantial transformation of products produced in the United States, because U.S.-made end products are not designated country products. Actually, the definition of "U.S.-made end product" allows either "substantial transformation" or "manufacture" in the United States to qualify as a U.S.-made end product, because the Buy American Act has been waived for U.S.-made end products when the World Trade Organization Government Procurement Agreement applies. However, this is not the case for domestic construction material. Even when trade agreements apply, domestic construction material must meet the Buy American requirements of domestic manufacture, not substantial transformation. Therefore, those respondents who argue that the Buy American Act requires substantial transformation are simply wrong.

ii. Should "manufacture" in this rule include the standard of substantial transformation?

Comment: Further elaborating on substantial transformation, two respondents recommended that the Councils should adopt a clear rule defining the concept of domestic manufacture consistent with the "well-established standard" of substantial transformation as the first part of the two-pronged test for domestic construction material. The respondent stated that the rule should not confer domestic status simply as a result of minor processing or mere assembly in the United States. According to these respondents, by not adopting substantial transformation, the interim rule has created ambiguity. These respondents pointed out a clear administrative process in the Federal Government for making substantial transformation determinations. They also stated that U.S. Customs and Border Protection (Customs) considers the totality of the circumstances and makes determinations on a case-by-case basis. The respondents questioned why the interim rule omitted any reference to substantial transformation.

Three respondents recommended allowing either manufacture (perhaps combined with the component test) or substantial transformation. According to one of the respondents, allowing both models to determine when a product has been manufactured in the United States ensures greatest flexibility. This respondent believed that this is only relevant below the Trade Agreements Act threshold, *i.e.,* above the threshold, the requirements defined under those pre-existing regulations would apply.

Response: Section 1605 of the Recovery Act does not require substantial transformation. It requires that manufactured goods be "produced" in the United States. The Councils have interpreted the law to equate "production" of manufactured goods to "manufacture." To the extent that the Recovery Act domestic source restriction is worded consistently with the Buy American Act, it is reasonable to implement in a similar fashion. "Substantial transformation" has never been applied in the FAR to domestic construction material, just to designated country construction material that is subject to trade agreements.

Therefore, the final rule continues to utilize the FAR language that parallels the pre-existing construction contract definition of domestic construction material, requiring manufacture in the United States.

iii. Definition of Manufacture

Comments: Other respondents were concerned about the definition of "manufacture." A respondent stated that the interim rule does not provide a clear definition of what constitutes manufacture, *i.e.,* how to determine whether sufficient activity has taken place in the United States for a material to be considered produced in the United States. Likewise, two respondents noted the various interpretations of "manufacture," *i.e.,* some believe it is similar or identical in concept to substantial transformation under Customs' rules, while others believe it is closer to the Buy American Act—Construction clause test for manufacture. One of these respondents asked that the final rule clarify the definition. Yet another respondent stated that, although the rule does not define "manufacture," the regulations suggest that the test will be similar to the requirement of U.S. manufacture applied under the Buy American Act. This may in some cases be less demanding than the substantial transformation test, which examines whether an article is transformed into a new and different article of commerce, having a new name, character, and use.

Response: The Councils have considered in the past including a definition of "manufacture" in the FAR but did not do so because of the case-specific nature of its application. The definition may be different for canned beans than for an aircraft. However, for those who find the word "manufacture" confusing and cite the long-standing tradition of interpretation of "substantial transformation," there is also a longstanding record of interpretation of "manufacture" under the Buy American Act. (See for example B–175633 of November 3, 1975, which addressed the issue of whether a radio had been manufactured in the United States. The GAO did not find against the Army position that, if the final manufacturing process takes place in the United States, the end product is "manufactured in the United States.")

iv. Tariff Shift

Comments: A respondent proposed that the rules of origin under 19 CFR part 102, currently used for NAFTA country-of-origin determinations, be applied to decisions regarding whether construction materials are considered domestic. According to the respondent, Customs is currently proposing that the CFR part 102 rules (also known as "tariff shift" rules) be applied for all country-of-origin determinations (See **Federal Register** at 73 FR 43385, July 25, 2008). Tariff shift rules consider the Harmonized Tariff Schedule of the United States classification of the article before and after manufacturing. If the classification shifts, then the article takes on a new country of origin.

Response: Companies that contract with the Government are accustomed to the well-established meaning of the term "manufacture" as applied under the Buy American Act and now the Recovery Act.

e. Iron and Steel

i. Similarity to Federal Transportation Laws

Comments: Three respondents pointed out that the section 1605 restrictions on iron and steel are similar to the Recovery Act Buy American requirements within the statutory and regulatory framework of Federal transportation laws (U.S. Department of Transportation highways and transit program), which mandate that 100 percent of the iron and steel used in a project be domestically manufactured and also impose comparable standards of unreasonable cost.

Response: The drafters of the FAR interim rule recognized the similarity to the restrictions applicable to the Federal Transit Administration, and modeled the FAR interim rule restriction on iron and steel after 49 CFR part 661, "Buy America Requirements."

ii. 51 Percent Component Test

Comments: One respondent wanted the FAR to go back to the 51 percent component test of the Buy American Act for what constitutes iron and steel products manufactured in the United States in order to ensure compliance with our international agreements, assist in getting projects started, limit delays, and ensure competition.

Response: Reverting to the 51 percent component test of the Buy American Act to determine what constitutes iron or steel products manufactured in the United States would not fully implement section 1605 of the Recovery Act. Section 1605 singled out iron and steel. In addition to requiring that manufactured construction material be manufactured in the United States, the law requires that the iron and steel also be produced in the United States. If the 51 percent component test of the Buy American Act were sufficient, then it would have been unnecessary to impose section 1605 at all. The Recovery Act could have continued to apply the Buy American Act without revision.

iii. Iron or Steel as a Component of Construction Material That Consists Wholly or Predominantly of Iron or Steel

Comments: One respondent also requested clarification that construction materials (such as welded steel pipe) that are produced in the United States using steel that was rolled in the United States from foreign slab are "produced in the United States" within the meaning of the Recovery Act.

A respondent stated that the FAR rule should allow contractors to utilize imported steel slab as raw material feed stock—and substantially transform that slab in the United States into flat rolled steel (hot rolled, cold rolled, galvanized, *etc.*) products, which in turn are used by other manufacturers to produce a wide variety of construction materials. Absent such an approach, construction material using these steel products could be deemed foreign construction materials, simply because the steel slab from which it was made was imported. According to the respondent, this will result in U.S. buyers shying away from these U.S. manufactured construction materials, thus eliminating U.S. jobs.

Another respondent, a carbon steel finishing mill, was concerned that steel can be either the construction material itself or a component of some other manufactured product (such as welded steel pipe). The respondent noted that a manufactured good may consist of only one component.

One respondent approved of the distinction between "steel used as a construction material" and "steel used in a construction material" but requested clarification of the boundaries of these two categories in the final rule. The respondent proposed that the boundary should be between—

- Steel goods delivered to the construction site directly from a steel mill (or its warehouse distributor) (*e.g.,* structural steel items (H-beams, I-beams, *etc.*), reinforcing rod, and plate); and
- Steel goods that have been further processed from intermediate, non-construction material products produced by a steel mill, into manufactured goods delivered to the construction site.

Alternatively, the respondent offered another definition of "steel used in a construction material"—"all steel goods except steel goods delivered to the construction site directly from a steel mill (or its warehouse/distributor) for use as a construction material."

Response: The Councils agree that a clearer distinction is required for circumstances when the Recovery Act Buy American restriction of section 1605 applies to iron or steel components. The intent of the interim rule was not to draw a line between iron or steel used as a construction material, and iron or steel used in a construction material, as suggested by one respondent, but between construction material that consisted wholly or predominantly of iron or steel and construction material in which iron or steel are minor components. The suggestion that manufactured steel goods not delivered to the construction site directly from the mill should be exempt would not be fulfilling the intent of the law. On the other hand, the requirement that every piece of iron and steel, no matter how miniscule, must be melted and rolled in the United States, would be quite unworkable, and would be counterproductive to the overall intent of the law.

The interim rule separated manufactured construction material into two main categories: Iron or steel used as a construction material and "other" manufactured construction material. The interim rule made clear that manufactured construction material that consisted wholly of iron or steel must be produced in the United States, including all stages of production except metallurgical processes involving refinement of steel additives. It also stated that "other" manufactured construction material would require manufacture in the United States, but imposed no requirement on the components or subcomponents in this category of "other" manufactured construction material.

The interim rule is not clear, however, with regard to treatment of construction material that consists predominantly, but not wholly, of iron or steel. Some respondents assumed that all construction material would fall in the "other" category unless it was wholly of iron or steel. Others interpreted, as was intended, that the "other" category was to cover material which did not consist wholly or predominantly of iron or steel.

The Councils re-examined the requirement of the statute and how best to convey these requirements in the regulations. Because iron and steel are singled out for specific mention in the

statute, the Councils conclude that a primary objective of the Act is to promote the use of domestic iron and steel. The Councils have determined that a clearer way to express the requirements of the law would be to interpret the requirement for iron or steel to be produced in the United States as being in addition to (rather than a subset of) the requirement for all manufactured construction material to be manufactured in the United States. The statute did not include the word "other." All manufactured construction material must be manufactured in the United States. This interpretation supports the requirement that iron or steel, whether or not it has reached the stage of being manufactured construction material, must be produced at all stages in the United States. This is similar to some other domestic source restrictions on particular materials or components such as the restrictions on domestic melting or production of specialty metals at 10 U.S.C. 2533b. The intent of the Councils was to balance full implementation of the law with feasibility of compliance. Therefore, the final rule applies this restriction on domestic production of iron and steel only when the iron or steel is a component of construction material that consists wholly or predominantly of iron or steel. (The respondent was correct that there may be just one component in a construction material).

In view of this policy clarification, the proposal to treat foreign slab as a "component" of other manufactured goods, not requiring production in the United States, is not acceptable, because the resultant construction material consists wholly or predominantly of iron or steel, and allowing foreign slab would not meet the objectives of the law.

The Councils have made changes to the policy at FAR 25.602 to clarify the restriction on the production of iron and steel and have revised the definitions of "domestic construction material" in FAR 25.601 and paragraph (a) of the FAR clauses at 52.225–21 and 52.225–23, specifying that all of the iron or steel in manufactured construction material that consists wholly or predominantly of iron or steel shall be produced in the United States, but the origin of the raw materials of the iron or steel is not restricted.

iv. Iron or Steel as Components of Manufactured Construction Material That Does Not Consist Wholly or Predominantly of Iron or Steel

Comments: Some respondents objected to the provision in the interim rule that the Recovery Act Buy American restriction does not apply to iron or steel used as components of other manufactured goods. One respondent stated that the Recovery Act Buy American requirements of section 1605 must apply to all iron and steel, including all iron and steel components and subcomponents used in manufactured construction material. One respondent believed that this provision of the interim rule creates a loophole, in that the use of foreign steel reinforcing bar (rebar) used in concrete slab would be allowed, because the steel rebar would be considered a component of a manufactured product (the concrete slab).

On the other hand, a different respondent believed that the fact that the regulations permit foreign steel or iron used as components or subcomponents of other manufactured construction material to be considered domestic construction materials as long as the manufacturing is done in the United States is a sound and practical decision. This respondent commented that the rule allows U.S. companies flexibility to prudently source from both American and foreign vendors to manage costs, while promoting U.S. manufacture.

Response: The interim rule would not allow foreign steel rebar (as a component of concrete slab) because the rule applies to construction material brought to the construction site. The steel rebar is brought separately to the construction site and is therefore itself construction material, not a component of the concrete slab, which is poured and formed on the construction site.

As stated in the prior section, iron and steel components are only exempt from the restriction of section 1605 if the construction material does not consist wholly or predominantly of iron or steel.

f. Components

Comments: Three respondents agreed with the interim rule approach of not including a requirement relating to the origin of components. They argue that an expansive and practical definition of manufactured goods is needed to allow the contractor leeway in getting the project done on time and within budget.

Many other respondents strongly argued for inclusion of a "component test," often citing the Buy American Act as a precedent.

- One respondent stated that the costs of all the domestic components in the final product must exceed 50 percent of the cost of all the components.
- A respondent stated that Congress' deliberate inclusion of the term "manufactured goods" was plainly intended to be under the precedent established under the Buy American Act. Yet another respondent stated that the interim rule does not meet the requirements of section 1605 because domestic content requirements for components and subcomponents parts have been omitted. This respondent also objected that the interim rule has ignored a long history of applying a domestic content rule in determining if a good is produced in the United States for purposes of enforcing domestic source restrictions. According to the respondent, OMB acknowledges that the two-part test relied upon is from the Buy American Act, then simply waives the domestic content part of the 1933 Act's text. Desiring an expeditious flow of funding cannot trump the statutory requirement to procure domestically produced goods. Longstanding interpretation of domestic manufactured goods under the Buy American Act also comports with Congressional intent to save and create manufacturing jobs.
- A respondent was disturbed that the interim rule explicitly rejected the use of a component test, one of the minimal Buy American Act standards for rule of origin. The respondent contended that allowing for the use of non-domestic component parts will have a significant impact on the job-creation ability of the stimulus.
- Two respondents stated that the Councils should adopt a clear rule defining the concept of domestic manufacture consistent with the well-established standard of substantial transformation and a 50 percent component content standard (by cost). The FAR should not confer domestic status simply as a result of minor processing or mere assembly in the United States.

Response: The Councils in the interim rule did not, as respondents claim, acknowledge dependence on the two-prong Buy American Act test and then waive the component test. The Councils relied on the difference in wording between section 1605 and the Buy American Act. The preamble to the interim rule specifically stated: "Because section 1605 does not specify a requirement that significantly all the components of construction material must also be domestic, as does the Buy American Act, the definition of domestic construction material under this interim rule does not include a requirement relating to the origin of the components of domestic manufactured construction material" (see **Federal Register** at 74 FR 14624, March 31, 2009). The Buy American Act requires manufacture in the United States "substantially all from articles,

materials, or supplies mined, produced, or manufactured * * * in the United States" (41 U.S.C. 10b). On the other hand, section 1605 only requires the manufactured goods to be "produced" in the United States. If Congress intended the component test to apply, it could have easily so stated in section 1605.

Comments: In fact, a few respondents even suggested carrying the component test further than the Buy American Act interpretation of the 50 percent domestic component test. A respondent stated that statutory language could be interpreted to mean a 100 percent domestic content requirement. Another respondent stated that, if OMB wanted to be aggressive, it could write a rule with an even more stringent component test (*see* Berry Amendment), especially with respect to textile and apparel products.

Response: Even if section 1605 were not silent on the issue of a 100 percent domestic component requirement, it would be almost impossible to comply with such a requirement in this current global economy. It would cause immense difficulty to American manufacturers, and section 1605 does not require it.

Comments: One respondent was confused about the waiver by the Administrator of OFPP of the component test for COTS items because of the technical correction made to FAR 25.001 by the interim rule. The respondent noted that the interim rule amends FAR 25.001(c)(1) by waiving the component test for commercially available off-the-shelf items for all procurements, regardless of whether the procurement is funded with Recovery Act funds.

Response: The interim rule did not introduce the component test waiver for COTS items at FAR 25.001(c)(1). The final rule for that change was published in the **Federal Register** at 74 FR 2713, January 15, 2009, and became effective February 17, 2009. However, the rationale for that waiver may provide support for the decision that the component test is not appropriate for implementation of the Recovery Act. The Administrator of OFPP waived the component test of the Buy American Act for COTS items because "a waiver of the component test would allow a COTS item to be treated as a domestic end product if it is manufactured in the United States, without tracking the origin of its components. Waiving only the component test of the Buy American Act for COTS items, and still requiring the end product to be manufactured in the United States, reduces significantly the administrative burden on contractors and the associated cost to the Government." The FAR procedures for evaluation of foreign offers in acquisitions of supplies covered by trade agreements is predicated on agencies treating offers of U.S.-made end products (*i.e.,* offers that may not be domestic end products that meet the component test of the Buy American Act) more like the agencies treat eligible products (the trade agreements do not apply any component test to eligible products from designated countries). Today's markets are globally integrated with foreign components often indistinguishable from domestic components. The difficulty in tracking the country of origin of components is a disincentive for firms to contract with the Government.

Comments: A number of respondents that agreed with not including the component test for domestic products still requested a definition of "component" in the rule.

Response: There are two basic definitions of "component" in the FAR, at 2.101 and 25.003, and associated Buy American Act clauses. In the final rule, there is no separate definition of component in FAR subpart 25.6, so the definition at FAR 25.003 applies to FAR subpart 25.6. However, for increased clarity, the appropriate definition of "component" has been included in the FAR clauses at 52.225–21 and 52.225–23.

g. Summary Matrix of Requirements for Domestic Construction Material

The following matrix summarizes the requirements for domestic construction material in projects that use Recovery Act funds.

REQUIREMENTS FOR DOMESTIC CONSTRUCTION MATERIAL IN PROJECTS THAT USE RECOVERY ACT FUNDS

Type of construction material	Applicable statute	Production of construction material	Production of iron/steel	Production of other components
Manufactured—wholly or predominantly iron or steel.	Section 1605 of Recovery Act.	Manufacture in U.S.	All processes in U.S. (except steel additives).	No requirement.
Manufactured—not wholly or predominantly iron or steel.	Section 1605 of Recovery Act.	Manufacture in U.S.	No requirement	No requirement.
Unmanufactured	Buy American Act	Mined or produced in U.S.	XXX	XXX.

3. Applicability of International Agreements

a. Trade Agreements

Comments: As provided by section 1605(d), the Recovery Act Buy American provisions must be applied in a manner consistent with United States obligations under international agreements. One respondent requested that the final regulations should ensure compliance with existing international obligations, but did not specify any shortcomings in the interim rule in this regard. Another respondent considered that the interim rule is creating great consternation with our international trading partners and could lead them to retaliate with their own protectionist measures. A third respondent claimed that the interim rule did not ensure consistency with international obligations.

Response: As required by section 1605, the FAR rule provides for full compliance with U.S. obligations under all international trade agreements when undertaking construction covered by such agreements with Recovery Act funds. The new required provisions and clauses implement U.S. obligations under our trade agreements in much the same way as they are currently implemented in non-Recovery Act construction contracts, with one exception. The Caribbean Basin countries are excluded from the definition of "Recovery Act designated country," because the treatment provided to them is not as a result of any U.S. international obligation but is the result of a United States initiative. The new cost evaluation standards do not apply to manufactured construction material from Recovery Act designated countries.

Comments: One respondent stated that, as drafted, the interim rule implied that all construction material from Recovery Act designated countries is exempt from the Recovery Act Buy

American requirements set forth in section 1605 and the Buy American Act. This implication is inconsistent with the law because, according to the respondent, not all Recovery Act designated country construction material is exempt. FAR subpart 25.4 limits the foreign products eligible for equal consideration with domestic offers. Even if end products for resale or set asides for small business are produced in Recovery Act designated countries, for example, they would not be deemed eligible products per FAR subpart 25.4. Likewise, one respondent pointed out that FAR subpart 25.4 does not apply to procurements set aside for small businesses and requested clarification in the final rule on continuation of this policy.

Response: The FAR subpart 25.4 exception for resale of end products is inapplicable to construction contracts.

FAR subpart 25.4 states that it does not apply to acquisitions set aside for small businesses. FAR 25.603(c) has a cross reference to FAR subpart 25.4.

Comments: Two respondents considered that the situation created by the interim rule with regard to sources of iron and steel is unfair. Namely, designated countries have unrestricted ability to provide iron and steel from anywhere, whereas domestic sources must provide iron and steel melted in the United States. According to these respondents, this would incentivize designated country steel firms to stop shipping slabs to the U.S. and to substitute finished construction materials. The result would be a loss of U.S. jobs in both the steel-finishing and construction-material manufacturing sectors.

Response: In its trade agreements, the United States commits to apply to products from designated countries the rule of origin that is used in the normal course of trade between these countries, *i.e.,* "wholly the product of" or "substantially transformed" in the designated country. In projects funded by the Recovery Act, we cannot add new restrictions on the products of our trading partners that are not applied to other procurements covered by our agreements.

Comments: A respondent recommended that the final FAR rule should provide for the use of an inventory accounting methodology to determine the origin of fungible goods that are commingled American and foreign inventories. This respondent noted that NAFTA permits this methodology to avoid unfairly disqualifying companies that produce eligible products but commingle such products in inventories with foreign products.

Response: The Recovery Act does not permit such methodology.

b. G20 Summit Pledge

Comments: The countries of the G20 stated at the summit that they would refrain from raising new trade barriers to trade in goods and services. According to various respondents, the new law and the interim rule, by adding the restrictions on the production of iron and steel and increasing the test for unreasonable costs, raise new barriers to trade, even though the Recovery Act Buy American requirement must be applied consistent with U.S. international obligations. A respondent stated that overly restrictive implementation of the Recovery Act will undermine the ability of the U.S. companies with global supply chains to participate in the Recovery Act. According to a respondent, it will lead to closed markets overseas to the detriment of American exports, products, and jobs.

A respondent stated that ambiguities in the interim rule were open to interpretation by Government agencies on multiple levels. In the absence of examples of permissible procurement from foreign sources, the business community must await test cases to determine whether, for example, the letter of the law in terms of the WTO GPA signatory exceptions to the exclusionary principles will truly apply. The respondent believed that this ambiguity serves as a de facto obstacle to foreign suppliers engaging in commerce or any form of business alliance with American bidders.

A non-U.S. respondent stated that access to the U.S. procurement market has been further limited in areas not covered by the WTO GPA. Their preference would be non-application of the new requirements to European Union member countries.

Two foreign respondents also wanted to emphasize that the United States should uphold the G20 statement in implementing the Recovery Act Buy American provisions. One stated that, for acquisitions below the WTO GPA threshold of $7,443,000 for construction, the new discriminatory procurement requirements would apply in relation to goods from Recovery Act designated countries.

Response: These concerns essentially go back to the requirements of section 1605 of the Recovery Act. The FAR rule must implement the law. Section 1605 provides for application consistent with United States obligations under international agreements. Pledges at the G20 Summit do not constitute international agreements, as contemplated by section 1605. The FAR rule cannot create new exemptions.

4. Other Definitions

a. Construction Material

Comments: Three respondents stated that, in some circumstances, if foreign pieces are delivered to the jobsite and assembled there instead of being delivered as part of an assembled construction material, those pieces would presumably be in violation. The respondents believe that this rule will encourage or force some assemblies to be done offsite in order to maintain compliance. They recommend allowing the contracting officer some level of discretion.

Response: The definition of construction material in the rule as an article, material, or supply brought to the construction site by the contractor or subcontractor for incorporation into the building or work is unchanged from the first sentence of the current FAR 25.003. That is how Government construction subject to the FAR has worked for many years.

Comments: One respondent further objected that the new FAR clause 52.225–23 included a definition of construction material that singles out "emergency life safety systems" as discrete and complete, allowing them to be evaluated as a single and distinct construction material, regardless of how and when the parts or components are delivered to the construction site. The respondent stated that there are numerous other types of systems, such as environmental control communications systems, that are integrated into the building in such a fashion that warrant being treated in a similar manner that the FAR should consider.

Response: This is the current FAR definition of construction material (see, for example, FAR 52.225–9(a)).

b. Public Building or Public Work

Comment: A respondent stated that there is no definition or cross reference for "public building" or "public work."

Response: The interim rule at FAR 25.602 referenced the definition of "public building or public work" at FAR 22.401. For the definition in the final rule, please see FAR 25.601.

c. Manufactured Construction Material/ Unmanufactured Construction Material

Comment: One respondent expressed concern that the definitions of manufactured and unmanufactured create no clear standard for determining

when a good is a domestic construction material.

Response: The standard for determining whether a good is a domestic construction material is not found in the definitions of "manufactured construction material" and "unmanufactured construction material." It is found in the definition of "domestic construction material" at FAR 25.601 and in the policy at FAR 25.602. In the final rule, the Councils have expanded the definition of "domestic construction material" at FAR 25.601 to include the more detailed standards relating to iron and steel that were included in the policy statement.

5. Exceptions

a. Class Exceptions

Comment: One respondent posited that blanket waivers or broad temporary waivers would be appropriate and should be broadly defined in the FAR. Another respondent noted that the statute was changed during conference to include, at paragraph (b), the phrase "category of cases" for which section 1605 would not apply and wondered why the FAR doesn't mention or take advantage of this language.

Response: The Councils note that neither the statute nor the FAR precludes the use of class waivers in appropriate circumstances.

Comments: Four respondents stated that the FAR should include a *de minimis* waiver in order to limit detrimental impacts of a very small-value item preventing a company from providing an entire system on a project. One respondent suggested a waiver for any construction material that costs less than 10 percent of the entire project cost. Another respondent believed that such minimal use should not trigger the 25 percent evaluation factor because such *de minimis* usage will not threaten the commercial viability of relevant U.S. industry. Two respondents used the example of piping where specific gaskets and fittings must be added on site and are not always manufactured domestically.

Response: Because construction material is defined as the article, material, or supply delivered to the construction site, and there is no component test (except for iron or steel), it is not possible for the delivery of an entire system to be considered non-domestic because of a very small value foreign component of the system, as long as the component is not delivered separately to the construction site.

Further, the clarification of "produced in the United States" (FAR 25.602(a)(1)) makes clear that iron and steel components will only be tracked if the construction material is a manufactured construction material that consists wholly or predominantly of iron or steel.

b. Public Interest

Comments: One respondent wanted a nationwide public interest waiver issued to enable Recovery Act funds to be deployed now, when most needed, rather than await publication of "Buy American regulations." The respondent stated that "(t)he U.S. Environmental Protection Agency (EPA) has taken the prudent approach of using the 'public interest' exception to issue a nationwide waiver of the Recovery Act Buy American requirement for State Revolving Loan Fund projects for which debt was incurred between October 1, 2008 and February 17, 2009."

Two respondents noted that the "public interest" exception does not specify criteria for the agency head to use. One of these respondents asked if there are special procedures that should be included in the FAR.

Response: The Councils believe that the first comment is moot, given that the Recovery Act regulations were published in the **Federal Register** at 74 FR 14623, March 31, 2009. Further, the EPA class exception referred to by the respondent was for State Revolving Loan Fund projects, an area that is covered by the OMB guidance, not the FAR.

With regard to the second comment, the Councils note that the language for this exception is modeled on the public interest exception currently in use for the Buy American Act at FAR 25.103(a). The public interest exception may only be authorized by the agency head (with power of redelegation) and is used infrequently. The FAR includes no special procedures so that agency heads retain appropriate flexibility.

Comment: Another respondent wanted to know whether each State uses the same criteria or procedures.

Response: The FAR is not used by State or local governments; it is used by Federal agencies to contract with appropriated funds. Each agency has a unique mission, and it would not be appropriate to require them all to use the same criteria.

Comment: A respondent suggested that the public interest exception be interpreted flexibly, considering economic efficiency and overall quality of goods so that, "even if non-American iron, steel, and manufactured goods may not satisfy the 25 percent rule, they can still be accepted under the public interest exception."

Response: The public interest exception is designed to be used flexibly and only as a last resort when the nonavailability or unreasonable cost exceptions do not fit. However, it is not designed to circumvent the new statutory standards for determination of unreasonable cost of domestic construction material.

c. Nonavailability

Comments: Four respondents queried the nonavailability waiver at FAR 25.603. One of these respondents believed that the nonavailability exception should be modified to require consideration of the geographical scope of the market in which production takes place so that foreign products are not unfairly discriminated against.

Response: The Councils disagree. The statute contained no such provision, and to add one now would contradict the intention of the U.S. Congress in enacting the Recovery Act. The statute provides an exception for nonavailability of domestic manufactured construction material. This does not result in any discrimination against foreign construction material, but actually allows the purchase of foreign construction material when domestic manufactured construction material is unavailable.

Comment: Another respondent recommended that the final rule provide for a time-limited, streamlined process for issuing nonavailability waivers.

Response: The reason for issuing a nonavailability exception is that the items in question are truly not available "in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality." (FAR 25.603(a)(1)). The Councils believe that contracting officers should not unfairly rush the process of determining whether these conditions apply to an item.

Comment: Another point of view expressed by a respondent was that the final rule should require an offeror proposing a nonavailability waiver to provide, in addition to the items already listed, the following: (1) Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials, (2) information documenting efforts to find available domestic sources, (3) a project schedule, and (4) relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials.

This respondent also requested that the contract list all foreign material

used, including construction material from designated countries.

Response: The Councils' intention was to use the same requirements for this exception as have been used for Buy American Act non-availability determinations for some 15 years. It would be an unnecessary burden to list designated country construction material, because section 1605 requires compliance with trade agreements, and there is no restriction on the use of designated country construction material when trade agreements apply.

Comment: A respondent noted that it seems inconsistent, if designated country materials are not considered foreign construction items, not to consider them when making the determinations in FAR 25.603(a) and (b).

Response: Designated country material is considered to be foreign.

d. Unreasonable Cost

Comment: One respondent stated that "it is quite apparent that a preference for offers excluding foreign construction material lacks the necessary legal justification and constitutes an obvious prejudice against foreign construction material."

Response: The Councils disagree. The paragraphs in the solicitation provisions on evaluation of offers (FAR clauses 52.225–22(c) and 52.225–24(c)) clearly state that the preference is for an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost. This does not constitute a prejudice against all foreign construction material. Inclusion of Recovery Act designated country construction material will not cause the Government to discriminate against an offer. This is in accordance with the law, as promulgated by the U.S. Congress and applied consistent with U.S. international obligations.

Comments: Two respondents stated that the evaluation of foreign construction materials, and the authority provided to submit alternate offers with equivalent domestic material, constitutes a prejudice against foreign construction material.

Response: The Councils disagree and note that the FAR is implementing U.S. law. Further, the implementation scheme is fully compliant with U.S. international agreements.

Comments: Two respondents commented that the 25 percent evaluation factor likely renders the unreasonable cost exception moot because it is so high that it will be impossible to meet.

Response: The Councils had no discretion about the requirement to add 25 percent to the contract cost when foreign iron, steel, or manufactured goods are proposed to be used in a construction project or public work. The factor is specifically required by the language of section 1605(b)(3) of Public Law 111–5.

Comment: Another respondent suggested that the table at FAR 52.225–23(d) should include another category entitled "Recovery Act designated country material."

Response: The respondent gave no reason for this suggestion, and the Councils cannot accept the recommendation. The statute provides an exception for unreasonable cost of domestic material, not for unreasonable cost of designated country construction material. The statute requires a comparison of the price differential between domestic manufactured construction material (including iron and steel) and foreign manufactured construction material (other than designated country manufactured construction material). In an acquisition subject to trade agreements, the material that is obtained from designated countries is not part of the evaluation because it is not domestic construction material.

6. Determinations That an Exception Applies

a. Process and Publication

Comments: Two respondents stated that the use of waivers should be encouraged and simplified.

Response: The Councils have made the exception process as streamlined as is possible within the terms of the statute. Agencies already have authority to use class exceptions.

Comments: Two respondents believed that the specific two-week timeframe for publication of a waiver in the **Federal Register** should be replaced with language requiring publication in the fastest practicable manner. In addition, the Office of Federal Procurement Policy (OFPP) requested that a copy of the nonavailability determination be provided to the OFPP Administrator.

Response: The statute specifically called for publication in the **Federal Register** (Pub. L. 111–5, section 1605(c)). However, the law does not set a time frame for such publication. The Councils agree with the respondents that timely publication is desirable, but the **Federal Register** often must accommodate workload priorities that are out of the control of contracting officers. Therefore, FAR 25.603(b)(2) is revised to require the agency head to provide the notice to the **Federal Register** within 3 business days after the determination is made. Except in unusual workload circumstances, this change should result in publication in the **Federal Register** in less than 2 weeks.

The final rule includes, at FAR 25.603(b), a requirement to provide to the Administrator for Federal Procurement Policy and to the Recovery Accountability and Transparency Board a copy of a determination made in accordance with FAR 25.603(a) concurrent with its provision to the **Federal Register**.

Comments: Six respondents demanded that OMB provide full transparency in the process of obtaining waivers of section 1605's application by requiring that all waiver requests be posted publicly on line. Several of these respondents wanted the waiver request to be posted promptly and publicly on line (the internet or *Recovery.gov*); one wanted the waiver request to be posted within 3 days of its receipt; and one respondent wanted waiver requests to be e-mailed to any trade associations and domestic manufacturers desiring to be on an alert list.

Response: While section 1605 does require publication of exceptions made to the requirement to use U.S.-produced iron, steel, and manufactured goods used in the project, there is no requirement in the statute to publish requests for an exception. Therefore, no change is being made to the FAR to introduce such a requirement.

Comment: One respondent considered that FAR 25.604(a) confuses inapplicability with exceptions and appears to refer to one of the exceptions as a rationale for that "inapplicability" determination. The respondent believed that the concept of the Buy American clause not being applicable is distinct from a situation where the Buy American clause may apply, but an exception has been granted.

Response: The FAR language for this case uses the exact wording from the current FAR Buy American Act coverage. Contracting officers are not waiving section 1605 of the Recovery Act or the Buy American Act, but determining whether an exception applies, and then, if an exception does apply, determining that section 1605 of the Recovery Act or the Buy American Act is inapplicable.

b. Requests for Specific Exceptions

Comments: Three respondents stated that the recent addition of commercial off-the-shelf (COTS) items to exceptions from the Buy American Act for construction materials (FAR 25.225–9

and –11) and the exception at FAR 25.103(e) for commercial information technology (IT) should be available for Recovery Act-funded construction projects.

Response: The Councils do not agree. The COTS item exception only exempts COTS items from the component test of the Buy American Act. This rule does not apply a component test to any of the manufactured construction material subject to section 1605 of the Recovery Act except iron and steel. By definition, unmanufactured construction material does not have components.

With regard to the commercial IT exception, it applies only to the Buy American Act. The Recovery Act exceptions are explicitly stated in section 1605 and are not identical to the Buy American Act exceptions.

Comments: Two respondents requested that commercial items, as a category, be exempt from coverage under section 1605.

Response: The Councils decline to make this change, as the Congress did not exempt commercial items from section 1605 applicability.

Comment: One of these respondents also asked that other typically non-construction materials not primarily made of iron or steel be excluded from coverage.

Response: The Councils do not understand the respondent's use of the term "other typically non-construction materials." The Councils have used the standard FAR definition of "construction material" without change. Under this definition, if it is incorporated into a public building or public work, then the material is construction material.

Comment: One respondent recommended that the FAR waive application of section 1605 for all manufactured goods not made primarily of iron and steel.

Response: The Councils decline for the reason that the Congress specifically included manufactured goods in the coverage of section 1605.

Comment: A respondent wanted the Councils to issue a class waiver from the Buy American Act requirements for electronic fluorescent lighting ballasts.

Response: The FAR includes, at FAR 25.104(a), a list of items that have been determined nonavailable in accordance with FAR 25.103(b)(1)(i). A class determination made in accordance with the above reference does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand. The respondent is free to make a request for a class determination. In addition, the offeror may request, and the contracting officer may grant, an exception on an individual contract in accordance with FAR 25.603.

7. Exemption for Acquisitions Below the Simplified Acquisition Threshold

Comments: Two respondents requested that the final rule exempt purchases under the simplified acquisition threshold (SAT) from the Recovery Act.

Response: The determination was made under the interim rule that section 1605 of the Recovery Act would apply to all contracts, including those below the SAT (see Interim Rule, Supplementary Information, Section C (see **Federal Register** at 74 FR 14625, March 31, 2009)). The Councils remain committed to this position in order to fully implement the goals of the Recovery Act. Therefore, any project, of whatever dollar value, financed with Recovery Act funds is subject to these limitations.

8. Remedies for Noncompliance

Comments: One respondent requested that the final rule include a safe-harbor provision protecting companies receiving Recovery Act funds without proper notice from the Government or the purchasing company.

Response: The Councils believe that this is unnecessary, given the protections already built into the use of Recovery Act funds. First, any appropriation of Recovery Act funds receives a special designation that identifies it as Recovery Act money. In addition, FAR 4.1501, 5.704, and 5.705, along with the contract checklist issued by the Recovery Accountability and Transparency Board, require contracting officers to indicate, in the solicitation or award, which products or services are funded under the Recovery Act.

Comment: One respondent stated that the regulations must provide adequate remedies, such as debarment, for non-compliance with section 1605. It claimed that only such meaningful remedies can serve to deter misbehavior.

Response: All of the usual remedies available through the FAR or Federal law are equally available as remedies for noncompliance with section 1605 regulations. No additional remedies are needed.

Comment: One respondent recommended replacing the requirement, at FAR 25.607(c)(4), to refer apparent fraudulent noncompliance to "the agency's Inspector General" rather than to "other appropriate agency officials."

Response: This recommendation has been partially accepted. While the agency Inspector General is available for referral of suspected fraud, it is not the only option in this situation. FAR 25.607(c)(4) is revised to include both the agency's Inspector General and other possible officials.

9. Funding Mechanisms

a. Modifications to Existing Contracts

Comments: Three respondents strongly recommended that the Recovery Act limitations should not be applied to task orders issued under Governmentwide Acquisition Contracts (GWACs) or Multiple Award Contracts (MACs).

Response: The Councils cannot make the change requested by these respondents because the Recovery Act restrictions follow the appropriations. Any construction project or public work funded with Recovery Act money must comply with the restrictions in section 1605, whether the contracting vehicle for the project is a contract or task order.

b. Treatment of Mixed Funding

Comments: Seven respondents were concerned that the interim rule failed to provide any clarity about how projects with mixed funding (some Recovery Act funds and other Federal appropriations) would be treated. Several respondents expressed a strong preference for treating mixed-funded projects as not covered by the Recovery Act limitations.

Response: Given that the statute was designed so that the section 1605 limitations are tied to the source of funding, the Councils do not have the option of complying with respondents' preference. Any Federal construction or public works contract effort that is funded by any funds, however miniscule, appropriated by the Recovery Act must, by law, comply with the section 1605 requirements. However, the regulations do provide that a contract may be funded with Recovery Act funds and non-Recovery Act funds if the funds are properly segregated by line item or sub-line item. In addition, contracting officers are required to indicate, in the solicitation or award, which products or services are funded under the Recovery Act. However, if the contracting officer does not properly segregate Recovery Act and non-Recovery funds, then the law requires the mixed-funded line items or contracts to be treated as if they were entirely Recovery-Act funded. (See discussion of "project" at 2.b. above and in the FAR text at 25.602–1(c).)

10. Interim Rule Improper

Comment: One respondent believed it was inappropriate to publish an interim rule, as it deprived interested parties of the right to comment. The need to have rules available as soon as the Recovery Act funds were made available to Federal agencies for obligation, according to the respondent, was not a sufficient justification for the absence of prior public comment.

Response: The Administration directed the Councils to publish an interim rule in order to provide contracting agencies with the necessary direction quickly. In any case, respondents were given an opportunity to comment fully on the interim rule, and each comment has been thoroughly considered by the Councils.

11. Inconsistencies Between This Rule and Pre-Existing FAR Rule and the OMB Grants Guidance

a. Inconsistency With Pre-Existing FAR

Comments: One respondent objected that this rule will require well-intentioned and compliant companies to establish yet more processes and systems (many of which will be largely duplicative of existing Buy American Act/Trade Agreements Act compliance requirements) to comply with the Recovery Act. The respondent claimed that this creates significant cost burdens and delays in construction projects. Another respondent stated that any change in current supply chains made in order to comply with this rule will limit competition, cause delays, and increase costs. A respondent objected to the creation of yet another list of designated countries.

Response: The Councils used pre-existing FAR language and processes to the extent that it was possible to do so and still meet the requirements of the Recovery Act. The Recovery Act also specified the new requirements for iron and steel and the 25 percent contract evaluation factor.

Recovery Act-designated countries were identified from the language of the statute, the Committee report, and consultation with the United States Trade Representative. Caribbean Basin countries were not included as Recovery Act-designated countries because they are not covered by an international agreement.

b. Inconsistency With the OMB Grants Guidance

Comments: Four respondents expressed a strong preference that the final rule should have the closest possible alignment with the OMB guidance governing grants under the Recovery Act.

One respondent noted that the OMB grants guidance includes examples of "public building." The respondent would like to know whether a public building in the FAR is the same as a public building in the OMB guidance.

Response: The Councils agree and note that the final rule was developed in close coordination with OMB grant officials. The Councils point out, however, that grants, financial assistance, and loans are not subject to the Buy American Act. Therefore, the coverage cannot be the same in these two regulations regarding unmanufactured construction material. Further, the OMB guidance applies to all assistance recipients, including States. Trade agreements do not apply uniformly at the State level.

The final revised FAR provisions include the definition from FAR 22.401 and add examples of public buildings and public works from the OMB grants guidance.

It is our understanding that the OMB grants coverage will be conformed to the FAR terminology to use "manufacture" in lieu of "substantially transformed." The Councils and OMB are not aware of any other areas where the OMB guidance and this FAR rule are not aligned.

Comment: One respondent requested that the Councils consider requesting EPA, Federal Transit/Highways Administration, and other agencies that have issued their own guidance to withdraw it.

Response: The Councils decline. There is no reason to request any agency to withdraw contracting guidance that is in compliance with the FAR.

Language in the Recovery Act exempted the Federal Highway Administration (FHA) from section 1605. It is appropriate that FHA maintain separate regulations.

12. Need for Additional Guidance

Comments: Two respondents stated that there is confusion about the scope of applicability of this rule and requested that the FAR more clearly spell out that contracting authorities are obliged to comply with international commitments and request relevant and user-friendly guidance.

Response: The Councils note that changes in the final rule have differentiated projects that are subject to the Recovery Act rules from projects that are subject to existing Buy American Act and trade agreements requirements. The Councils have made it abundantly clear in the final rule and this preamble that Federal agencies must comply with international agreements when conducting procurements for Recovery Act projects that are covered by such agreements.

Further, contracting authorities that do not comply with the FAR, and thereby with international commitments, should be reported and are subject to sanctions.

Comment: One of those respondents thought that the FAR does not explain what regime must be followed in cases where an entity covered by the World Trade Organization Government Procurement Agreement (WTO GPA) conducts procurement jointly with an entity that is not covered by the WTO GPA.

Response: If one entity in a joint procurement is covered by the GPA or another international agreement, but another entity that is also involved in the same procurement is not covered by the GPA or another international agreement, the procurement will be conducted in a manner that ensures that U.S. obligations under international agreements are honored. That means that in such a case, products from Recovery Act designated countries will not be subject to the restrictions of section 1605 of the Recovery Act.

C. Applicability to Contracts at or Below the Simplified Acquisition Threshold

Section 4101 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to them. FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them.

The FAR Council determined, for the interim rule, that it should apply to contracts or subcontracts at or below the simplified acquisition threshold, as defined at FAR 2.101. The public comments received did not cause the FAR Council to modify this position for the final rule.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it will only impact an offeror that wants to use non-U.S. iron, steel, and manufactured goods in a construction project in the United States. The Councils stated in the interim rule their belief that there are adequate domestic sources for these materials, and the Office of Management and Budget (OMB) guidance M–09–10 issued February 18, 2009, entitled "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," provides a strong preference for using small businesses for Recovery Act projects wherever possible. No comments to the contrary were received from small entities in response to the interim rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, the information collection requirements imposed by the FAR provisions 52.225–22 and 52.225–24 are currently covered by the approved information collection requirements for FAR provisions 52.225–9 and 52.225–11 (OMB Control number 9000–0141, entitled Buy America Act—Construction—FAR Sections Affected: Subpart 25.2; 52.225–9; and 52.225–11). No public comments were received regarding the data elements, the burden, or any other part of the collection.

List of Subjects in 48 CFR Parts 2, 5, 25, and 52

Government procurement.

Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 5, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 5, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2), in the definition "Component", by revising paragraphs (2) and (3); and adding paragraph (4) to read as follows:

2.101 Definitons.

* * * * *

(b) * * *

(2) * * *

Component * * *

(2) 52.225–1 and 52.225–3, see the definition in 52.225–1(a) and 52.225–3(a);

(3) 52.225–9 and 52.225–11, see the definition in 52.225–9(a) and 52.225–11(a); and

(4) 52.225–21 and 52.225–23, see the definition in 52.225–21(a) and 52.225–23(a).

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Amended]

■ 3. Amend section 5.207 by removing from paragraph (c)(13)(iii) the word "Other".

PART 25—FOREIGN ACQUISITION

■ 4. Amend section 25.001 by adding a new sentence to the end of paragraph (c)(4) to read as follows:

25.001 General.

* * * * *

(c) * * *

(4) * * * If the construction material consists wholly or predominantly of iron or steel, the iron or steel must be produced in the United States.

■ 5. Amend section 25.003 by revising the definition "Domestic construction material" to read as follows:

25.003 Definitions.

* * * * *

Domestic construction material means—

(1)(i) An unmanufactured construction material mined or produced in the United States;

(ii) A construction material manufactured in the United States, if—

(A) The cost of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item;

(2) Except that for use in subpart 25.6, see the definition in 25.601.

* * * * *

■ 6. Revise section 25.600 to read as follows:

25.600 Scope of subpart.

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) with regard to manufactured construction material and the Buy American Act with regard to unmanufactured construction material. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

■ 7. Amend section 25.601 by revising the definition "Domestic construction material"; and adding, in alphabetical order, the definition "Public building or public work".

The revised and added text reads as follows:

25.601 Definitions.

* * * * *

Domestic construction material means the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American Act applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

* * * * *

Public building or public work means a building or work, the construction, prosecution, completion, or repair of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency (see 22.401). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

* * * * *

■ 8. Revise section 25.602 to read as follows:

25.602 Policy.

25.602–1 Section 1605 of the Recovery Act.

Except as provided in 25.603—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless the

public building or public work is located in the United States and—

(1) All of the iron, steel, and manufactured goods used as construction material in the project are produced or manufactured in the United States.

(i) All manufactured construction material must be manufactured in the United States.

(ii) *Iron or steel components.* (A) Iron or steel components of construction material consisting wholly or predominantly of iron or steel must be produced in the United States. This does not restrict the origin of the elements of the iron or steel, but requires that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives.

(B) The requirement in paragraph (a)(1)(ii)(A) of this section does not apply to iron or steel components or subcomponents in construction material that does not consist wholly or predominantly of iron or steel.

(iii) *All other components.* There is no restriction on the origin or place of production or manufacture of components or subcomponents that do not consist of iron or steel.

(iv) *Examples.* (A) If a steel guardrail consists predominantly of steel, even though coated with aluminum, then the steel would be subject to the section 1605 restriction requiring that all stages of production of the steel occur in the United States, in addition to the requirement to manufacture the guardrail in the United States. There would be no restrictions on the other components of the guardrail.

(B) If a wooden window frame is delivered to the site as a single construction material, there is no restriction on any of the components, including the steel lock on the window frame; or

(2) If trade agreements apply, the manufactured construction material shall either comply with the requirements of paragraph (a)(1) of this subsection, or be wholly the product of or be substantially transformed in a Recovery Act designated country;

(b) Manufactured materials purchased directly by the Government and delivered to the site for incorporation into the project shall meet the same domestic source requirements as specified for manufactured construction material in paragraphs (a)(1) and (a)(2) of this section; and

(c) A project may include several contracts, a single contract, or one or more line items on a contract.

25.602–2 Buy American Act.

Except as provided in 25.603, use only unmanufactured construction material mined or produced in the United States, as required by the Buy American Act or, if trade agreements apply, unmanufactured construction material mined or produced in a designated country may also be used.

■ 9. Revise section 25.603 to read as follows:

25.603 Exceptions.

(a)(1) When one of the following exceptions applies, the contracting officer may allow the contractor to incorporate foreign manufactured construction materials without regard to the restrictions of section 1605 of the Recovery Act or foreign unmanufactured construction material without regard to the restrictions of the Buy American Act:

(i) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.103(b)(1) also apply if any of those articles are acquired as construction materials.

(ii) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.605.

(iii) *Inconsistent with public interest.* The head of the agency may determine that application of the restrictions of section 1605 of the Recovery Act to a particular manufactured construction material, or the restrictions of the Buy American Act to a particular unmanufactured construction material would be inconsistent with the public interest.

(2) In addition, the head of the agency may determine that application of the Buy American Act to a particular unmanufactured construction material would be impracticable.

(b) *Determinations.* When a determination is made, for any of the reasons stated in this section, that certain foreign construction materials may be used—

(1) The contracting officer shall list the excepted materials in the contract; and

(2) For determinations with regard to the inapplicability of section 1605 of the Recovery Act, unless the construction material has already been determined to be domestically nonavailable (*see* list at 25.104), the head of the agency shall provide a notice to the **Federal Register** within three business days after the determination is made, with a copy to the Administrator for Federal Procurement Policy and to the Recovery Accountability and Transparency Board. The notice shall include—

(i) The title "Buy American Exception under the American Recovery and Reinvestment Act of 2009";

(ii) The dollar value and brief description of the project; and

(iii) A detailed justification as to why the restriction is being waived.

(c) *Acquisitions under trade agreements.* (1) For construction contracts with an estimated acquisition value of $7,804,000 or more, also see subpart 25.4. Offers proposing the use of construction material from a designated country shall receive equal consideration with offers proposing the use of domestic construction material.

(2) For purposes of applying section 1605 of the Recovery Act to evaluation of manufactured construction material, designated countries do not include the Caribbean Basin Countries.

■ 10. Amend section 25.604 by revising paragraph (c)(1), and by removing from paragraph (c)(2) "the unmanufactured" and adding "the domestic unmanufactured" in its place.

The revised text reads as follows:

25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act.

* * * * *

(c) * * *

(1) *Manufactured construction material.* The contracting officer must compare the offered price of the contract using foreign manufactured construction material (*i.e.,* any construction material not manufactured in the United States, or construction material consisting predominantly of iron or steel and the iron or steel is not produced in the United States) to the estimated price if all domestic manufactured construction material were used. If use of domestic manufactured construction material would increase the overall offered price of the contract by more than 25 percent, then the contracting officer shall determine that the cost of the domestic manufactured construction material is unreasonable.

* * * * *

■ 11. Amend section 25.605 by—

■ a. Revising paragraphs (a)(1) and (a)(2);

■ b. Redesignating paragraphs (b) through (d) as paragraphs (c) through (e);

■ c. Adding a new paragraph (b); and

■ d. Removing from the newly designated paragraph (c) "If two" and adding "Unless paragraph (b) applies, if two" in its place.

The revised and added text reads as follows:

25.605 Evaluating offers of foreign construction material.

(a) * * *

(1) Use an evaluation factor of 25 percent, applied to the total offered price of the contract, if foreign manufactured construction material is incorporated in the offer based on an exception for unreasonable cost of comparable domestic construction material requested by the offeror.

(2) In addition, use an evaluation factor of 6 percent applied to the cost of foreign unmanufactured construction material incorporated in the offer based on an exception for unreasonable cost of comparable domestic unmanufactured construction material requested by the offeror.

(b) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in paragraph (a) of this section and use the evaluated price in determining the offer that represents the best value to the Government.

* * * * *

■ 12. Amend section 25.607 by revising paragraph (c)(4) to read as follows:

25.607 Noncompliance.

* * * * *

(c) * * *

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the agency's inspector general or the officer responsible for criminal investigation.

■ 13. Amend section 25.1102 by redesignating paragraph (e)(2) as paragraph (e)(3); adding a new paragraph (e)(2); and revising the newly designated paragraph (e)(3) to read as follows:

25.1102 Acquisition of construction.

* * * * *

(e) * * *

(2) If these Recovery Act provisions and clauses are only applicable to a project consisting of certain line items in the contract, identify in the schedule the line items to which the provisions and clauses apply.

(3) When using clause 52.225–23, list foreign construction material in paragraph (b)(3) of the clause as follows:

(i) *Basic clause.* List all foreign construction materials excepted from the Buy American Act or section 1605 of the Recovery Act, other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country.

(ii) *Alternate I.* List in paragraph (b)(3) of the clause all foreign construction material excepted from the Buy American Act or section 1605 of the Recovery Act, other than—

(A) Manufactured construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman; or

(B) Unmanufactured construction material from a designated country other than Bahrain, Mexico, or Oman.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 14. Amend section 52.225–21 by—

■ a. Revising the section heading;

■ b. Revising the heading and the date of the clause;

■ c. In paragraph (a) by—

■ 1. Adding, in alphabetical order, the definition "Component";

■ 2. Removing the last sentence from the definition "Construction material"; and

■ 3. Revising the definition "Domestic construction material"; and

■ d. Revising paragraphs (b)(1)(i), (b)(1)(ii), and (b)(4).

The revised and added text reads as follows:

52.225–21 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials (Oct 2010)

(a) * * *

Component means an article, material, or supply incorporated directly into a construction material.

* * * * *

Domestic construction material means the following—

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American Act applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

* * * * *

(b) * * *

(1) * * *

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American Act (41 U.S.C. 10a–10d) by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a foreign country.

* * * * *

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material, when compared to the cost of comparable foreign manufactured construction material, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American Act to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

* * * * *

■ 15. Amend section 52.225–22 by—

■ a. Revising the section heading;

■ b. Revising the heading and the date of the provision;

■ c. Removing from paragraph (a) the word "Other";

■ d. In paragraph (c) by—

■ 1. Adding in paragraph (c)(1) introductory text "in accordance with FAR 25.604" after the word "applies";

■ 2. Revising paragraph (c)(1)(i);

■ 3. Adding in paragraph (c)(1)(ii) "an exception for the" after the words "based on"; and

■ 4. Redesignating paragraph (c)(2) as paragraph (c)(3); adding a new paragraph (c)(2); and revising the newly designated paragraph (c)(3); and

■ e. Removing from paragraph (d)(1) "paragraph (b)(2)" and adding "paragraph (b)(3)" in its place.

The revised and added text reads as follows:

52.225–22 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials.

* * * * *

Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials (Oct 2010)

* * * * *

(c) * * *

(1) * * *

(i) 25 percent of the offered price of the contract, if foreign manufactured construction material is incorporated in the offer based on an exception for unreasonable cost of comparable manufactured domestic construction material; and

* * * * *

(2) If the solicitation specifies award on the basis of factors in addition to cost or price, the Contracting Officer will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated price in determining the offer that represents the best value to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost of comparable domestic construction material.

* * * * *

■ 16. Amend section 52.225–23 by—

■ a. Revising the section heading;

■ b. Revising the heading and the date of the clause;

■ c. In paragraph (a) by—

■ 1. Adding, in alphabetical order, the definitions “Component”, “Designated country”, “Designated country construction material”, and “Nondesignated country”;

■ 2. Removing the last sentence from the definition “Construction material”;

■ 3. Revising the definition “Domestic construction material”; and

■ 4. Removing from the definition “Recovery Act designated country” paragraph (2) the word “Israel,”;

■ d. Revising paragraph (b);

■ e. Revising paragraph (c)(3);

■ f. Removing from the table heading in paragraph (d) “Foreign and” and adding “Foreign (Nondesignated Country) and” in its place; and

■ g. In Alternate I by—

■ i. Revising the date of the alternate; and

■ ii. Revising paragraph (b).

The revised and added text reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements (Oct 2010)

(a) * * *

Component means an article, material, or supply incorporated directly into a construction material.

* * * * *

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American Act applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

* * * * *

Nondesignated country means a country other than the United States or a designated country.

* * * * *

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American Act do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American Act by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a nondesignated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate* “*none*”.]

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material is unreasonable when the cumulative cost of such material, when compared to the cost of comparable foreign manufactured construction material, other than Recovery Act designated country construction material, will increase the overall cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material, other than designated country construction material, by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction

material would be inconsistent with the public interest or the application of the Buy American Act to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) * * *

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country is noncompliant with the applicable Act.

* * * * *

Alternate I (Oct 2010). * * *

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American Act do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American Act by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a nondesignated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material, other than Bahrainian, Mexican, or Omani construction material, in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

■ 17. Amend section 52.225–24 by—

■ a. Revising the section heading;

■ b. Revising the heading and the date of the provision;

■ c. Removing from paragraph (a) the word "Other"; and

■ d. Revising paragraph (c).

The revised text reads as follows:

52.225–24 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements (Oct 2010)

* * * * *

(c) *Evaluation of offers.* (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies in accordance with FAR 25.604, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign manufactured construction material is included in the offer based on an exception for the unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on an exception for the unreasonable cost of comparable domestic unmanufactured construction material.

(2) If the solicitation specifies award on the basis of factors in addition to cost or price, the Contracting Officer will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

* * * * *

[FR Doc. 2010–21027 Filed 8–27–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–45; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–45 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005–45, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–45 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–45

Item	Subject	FAR case	Analyst
I	Inflation Adjustment of Acquisition-Related Thresholds	2008–024	Jackson.
II	Definition of Cost or Pricing Data	2005–036	Chambers.
III	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Materials.	2009–008	Davis.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–45 amends the FAR as specified below:

Item I—Inflation Adjustment of Acquisition-Related Thresholds (FAR Case 2008–024)

This final rule amends the FAR to implement section 807 of the Ronald W.

Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010.

This is the second review of FAR acquisition-related thresholds. The Councils published a proposed rule in the **Federal Register** at 75 FR 5716, February 4, 2010.

The effect of the final rule on heavily-used thresholds is the same as stated in the preamble to the proposed rule:

- The micro-purchase base threshold of $3,000 (FAR 2.101) is not changed.
- The simplified acquisition threshold (FAR 2.101) is raised from $100,000 to $150,000.
- The FedBizOpps preaward and post-award notices (FAR part 5) remain at $25,000 because of trade agreements.
- Commercial items test program ceiling (FAR 13.500) is raised from $5,500,000 to $6,500,000.
- The cost or pricing data threshold (FAR 15.403–4) is raised from $650,000 to $700,000.
- The prime contractor subcontracting plan (FAR 19.702) floor is raised from $550,000 to $650,000, and the construction threshold of $1,000,000 increases to $1,500,000.

Item II—Definition of Cost or Pricing Data (FAR Case 2005–036)

This final rule amends the FAR by redefining "cost or pricing data," adding a definition of "certified cost or pricing data," and changing the term "information other than cost or pricing data," to "data other than certified cost or pricing data." The rule clarifies the existing authority for contracting officers to require certified cost or pricing data or data other than certified cost or pricing data, and the existing requirements for submission of the various types of pricing data. The rule is required to eliminate confusion and misunderstanding, especially regarding the authority of the contracting officer to request data other than certified cost or pricing data when there is no other means to determine that proposed prices are fair and reasonable. Most significantly, the rule clarifies that data other than certified cost or pricing data may include the identical types of data as certified cost or pricing data but without the certification. Because the rule clarifies existing requirements, it will have only minimal impact on the Government, offerors, and automated systems.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Materials (FAR Case 2009–008)

This final rule converts the interim rule published in the **Federal Register** at 74 FR 14623, March 31, 2009, to a final rule with changes. This final rule implements section 1605 of Division A of the American Recovery and Reinvestment Act (Recovery Act) of 2009. It prohibits the use of funds appropriated for or otherwise made available by the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605 mandates application of the Recovery Act Buy American requirement in a manner consistent with U.S. obligations under international agreements. Least developed countries continue to be treated as designated countries per congressional direction. Section 1605 also provides for waivers under certain limited circumstances.

Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–21044 Filed 8–27–10; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Monday,
August 30, 2010

Part V

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2570

Prohibited Transaction Exemption Procedures; Employee Benefit Plans; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2570

RIN 1210–AA98

Prohibited Transaction Exemption Procedures; Employee Benefit Plans

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document contains a proposed rule that, if adopted, would supersede the existing procedure governing the filing and processing of applications for administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code of 1986 (the Code), and the Federal Employees' Retirement System Act of 1986 (FERSA). The Secretary of Labor is authorized to grant exemptions from the prohibited transaction provisions of ERISA, the Code, and FERSA and to establish an exemption procedure to provide for such relief. The proposed rule would clarify and consolidate the Department of Labor's exemption procedures and provide the public with a more comprehensive description of the prohibited transaction exemption process.

DATES: *Comment Date:* Written comments on the proposed regulation should be received by the Department of Labor on or before October 14, 2010. *Effective Date:* The Department proposes to make this regulation effective 60 days after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: To facilitate the receipt and processing of responses, the Department encourages interested persons to submit their responses electronically by e-mail to: *e-OED@dol.gov* or by using the Federal eRulemaking portal at *http://www.regulations.gov* (follow instructions for submission of comments). Persons submitting responses electronically are encouraged not to submit paper copies. Persons interested in submitting written responses in paper form should send or deliver their responses (preferably, at least three copies) to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Prohibited Transaction Exemption Procedures Proposed Regulation. All written responses 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, Room N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Mark W. Judge, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8550. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Part 4 of Title I of ERISA establishes an extensive framework of standards and rules governing the conduct of plan fiduciaries; collectively, these rules are designed to safeguard the integrity of employee benefit plans. As part of this structure, section 406 of ERISA generally prohibits the fiduciary of a plan from causing such plan to engage in a variety of transactions with certain related parties, unless a statutory or administrative exemption applies to the transaction. These related parties (which include plan fiduciaries, sponsoring employers, unions, service providers, and other persons who may be in a position to exercise improper influence over a plan) are defined as "parties in interest" in section 3(14) of ERISA.[1] Section 406 also generally prohibits a plan fiduciary from (i) dealing with the assets of a plan in his or her own interest or for his or her account, (ii) acting in any transaction involving the plan on behalf of a party whose interests are adverse to those of the plan or its participants and beneficiaries, or (iii) receiving any consideration for his or her own personal account from a party dealing with the plan in connection with a transaction involving plan assets, unless an exemption specifically applies to such conduct.

To supplement these provisions, sections 406 and 407(a) of ERISA impose restrictions on the nature and extent of plan investments in assets such as "employer securities" (as defined in section 407(d)(1) of ERISA) and "employer real property" (as defined in section 407(d)(2) of ERISA). Most of the transactions prohibited by section 406 of ERISA are likewise prohibited by section 4975 of the Code, which imposes an excise tax on those transactions to be paid by each "disqualified person" (defined in section 4975(e)(2) of the Code in virtually the same manner as the term "party in interest") who engages in the prohibited transactions.

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules; these exemptions were enacted by Congress to prevent the disruption of a number of customary business practices involving employee benefit plans. The enumerated statutory exemptions generally afford relief for, among other things, loans to participants, the provision of services necessary for the operation of a plan for no more than reasonable compensation, loans to employee stock ownership plans, and deposits in certain financial institutions regulated by state or federal agencies.[2]

In addition, section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions (on either an individual or a class basis) from the restrictions of ERISA sections 406 and 407(a) in instances where the Secretary makes findings on the record that such relief is (i) administratively feasible, (ii) in the interests of the plan and its participants and beneficiaries, and (iii) protective of the rights of participants and beneficiaries of such plan. Similarly, section 4975(c)(2) of the Code authorizes the Secretary of the Treasury or his delegate to grant administrative exemptions from the prohibitions of Code section 4975(c)(1) upon making the same findings. Before an exemption is granted, notice of its pendency must be published in the **Federal Register**. Interested persons must be given the opportunity to comment on the proposed exemption. If the transaction involves potential fiduciary self-dealing or conflicts of interest, an opportunity for a public hearing must be provided.

Sections 408(a) of ERISA and 4975(c)(2) of the Code also direct the Secretary of Labor and the Secretary of the Treasury, respectively, to establish procedures for granting administrative

[1] The transactions that are generally prohibited by section 406 include sales, exchanges, or leases of property; loans or extensions of credit; and the furnishing of goods, services, or facilities. In addition, section 406 generally prohibits a plan fiduciary from allowing the transfer to (or use by or for the benefit of) a party in interest of any assets of a plan.

[2] The Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 780), enacted on August 17, 2006, amended both ERISA and the Code to establish additional statutory exemptions for certain transactions, such as those involving the block trading of securities or other property between a plan and a party in interest, the cross trading of a security between a plan and any other account managed by the same investment manager, and the execution of certain foreign exchange transactions between a plan and a bank or broker-dealer.

exemptions. In this connection, section 3003(b) of ERISA directs the Secretary of Labor and the Secretary of the Treasury (the Secretaries) to consult and coordinate with each other with respect to the establishment of rules applicable to the granting of exemptions from the prohibited transaction restrictions of ERISA and the Code. In addition, under section 3004 of ERISA, the Secretaries are authorized to develop rules on a joint basis that are appropriate for the efficient administration of ERISA.

Pursuant to the foregoing statutory provisions, the Secretaries jointly issued an exemption procedure on April 28, 1975 (ERISA Procedure 75–1, 40 FR 18471, also issued as Rev. Proc. 75–26, 1975–1 C.B. 722). Under this procedure, a person seeking an exemption under both section 408(a) of ERISA and section 4975 of the Code was obliged to file an exemption application with both the Internal Revenue Service and the Department of Labor. However, the requirement of seeking exemptive relief for the same transaction from two separate federal departments soon proved administratively cumbersome.

To resolve this problem, section 102 of Presidential Reorganization Plan No. 4 of 1978 (3 CFR 332 (1978), *reprinted in* 5 U.S.C. app. at 672 (2006), *and in* 92 Stat. 3790 (1978)), effective on December 31, 1978, transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the Code, as well as under section 408(a) of ERISA, to issue individual and class exemptions from the prohibited transaction restrictions of ERISA and the Code. The Secretary of Labor has delegated this authority, along with most of the Secretary's other responsibilities under ERISA, to the Assistant Secretary of Labor for the Employee Benefits Security Administration. *See* Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

FERSA, enacted in 1986, contained prohibited transaction rules similar to those found in ERISA and the Code that are applicable to parties in interest with respect to the Federal Thrift Savings Fund established by FERSA. The Secretary of Labor is directed under FERSA to prescribe, by regulation, a procedure for granting administrative exemptions from certain of those prohibited transactions. *See* 5 U.S.C. section 8477(c)(3). The Secretary of Labor has delegated this rulemaking authority under FERSA to the Assistant Secretary of Labor for the Employee Benefits Security Administration. See Secretary of Labor's Order 6–2009.

Four years after the enactment of FERSA, the Department published a final regulation (29 CFR 2570.30 *et seq.* (1991), *reprinted in* 55 FR 32847 (August 10, 1990)) setting forth a revised exemption procedure that superseded ERISA Procedure 75–1. This regulation, which became effective on September 10, 1990, reflects the jurisdictional changes made by Presidential Reorganization Plan No. 4 and extends the scope of the exemption procedure to applications for relief from the FERSA prohibited transaction rules. In addition, the 1990 final regulation codified various informal exemption guidelines developed by the Department since the adoption of ERISA Procedure 75–1.

As noted previously, section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions on either an individual or a class basis. Class exemptions provide general relief from the restrictions of ERISA, the Code, and/or FERSA to those parties in interest who engage in the categories of transactions described in the exemption and who also satisfy the conditions stipulated by the exemption. In their broad applicability and policy implications, class exemptions possess several of the characteristics of agency rulemaking; accordingly, persons who are in conformity with all of the requirements of a class exemption are not ordinarily required to seek an individual exemption for the same transaction from the Department. Individual exemptions, by contrast, involve case-by-case determinations as to whether the specific facts represented by an applicant concerning an exemption transaction (as well as the conditions applicable to such a transaction) support a finding by the Department that the requirements for relief from the prohibited transaction provisions of ERISA, the Code, and/or FERSA have been satisfied in a particular instance.

While the vast majority of administrative exemptions issued by the Department have been the product of requests for relief from individual applicants and/or the employee benefits community, section 408(a) of ERISA also authorizes the Department to initiate exemptions on its own motion. Recent examples of such Department-initiated exemptions include Prohibited Transaction Exemption (PTE) 2002–51 (class exemption, as amended in 2006, providing relief from the sanctions contained in section 4975 of the Code for certain eligible transactions identified in the Department's Voluntary Fiduciary Correction Program) and PTE 2003–39 (class exemption providing relief for the receipt of consideration by a plan from a party in interest in connection with the release of a claim in settlement of actual or threatened litigation).

In considering individual exemption requests from applicants, the Department has consistently exercised its authority under ERISA section 408(a) by carefully examining the decision-making process utilized by a plan's fiduciaries with respect to a transaction. In applying this policy, the Department determines whether it can make findings that the transaction is designed to adequately safeguard the interests of the plan's participants and beneficiaries. Therefore, the Department requires, as a condition of every exemption, that the terms of the subject transaction be no less favorable to the plan than the terms which the plan could obtain in an arm's-length transaction with an unrelated party. Depending on the facts and circumstances of a particular transaction, additional conditions for exemptive relief generally are required.

The Department has followed this policy in considering requests for either prospective or retroactive exemptive relief. In general, the Department does not make determinations concerning the appropriateness, attractiveness, or prudence of the investment proposals submitted by exemption applicants. However, the Department ordinarily will not give favorable consideration to an exemption request if the Department believes that the proposed transactions are inconsistent with the fiduciary responsibility provisions of sections 403 and 404 of ERISA. Accordingly, the Department requires that an exemption transaction be designed to minimize the potential for conflicts of interest or self-dealing. This approach allows qualified professionals or responsible fiduciaries to assess the prudence of a transaction independently and in a manner that is protective of the plan's assets. Moreover, the structure of the transaction under consideration should preclude unilateral action by the applicant which could disadvantage the investing plan.

In keeping with the policy of evaluating the decisional processes surrounding a transaction, many of the exemptions issued by the Department are conditioned on the retention of an independent fiduciary to represent the interests of the plan, particularly where a plan fiduciary has interests with respect to a transaction which may conflict with his or her fiduciary duties to the plan. In these situations, an independent fiduciary typically will

exercise his or her authority to negotiate, approve, and/or monitor an exemption transaction on behalf of the plan. Similarly, valuations and other assessments relevant to an exemption are expected to be made by qualified professionals independent of the party in interest proposing to deal with the plan's assets in the subject transaction.

Over time, the Department has issued guidance explaining its policies and practices relating to the consideration of exemption applications. In 1985, the Department published a statement of policy concerning the issuance of retroactive exemptions from the prohibited transaction provisions of section 406 of ERISA and section 4975 of the Code (ERISA Technical Release 85–1, January 22, 1985). This statement noted that, in evaluating future applications for retroactive exemptions, the Department would ordinarily take into account a variety of objective factors in determining whether a plan fiduciary had exhibited good faith conduct in connection with the past prohibited transaction for which relief is sought (such as whether the fiduciary had utilized a contemporaneous independent appraisal or reference to an objective third-party source, *e.g.,* a stock exchange, in establishing the fair market value of the plan assets acquired or disposed of by the plan in connection with the transaction at issue). However, while noting that the satisfaction of such objective criteria might be indicative of a fiduciary's good faith conduct, the release cautioned that the Department would routinely examine the totality of facts and circumstances surrounding a past prohibited transaction before reaching a final determination on whether a retroactive exemption is warranted.

In 1995, the Department issued a publication, *Exemption Procedures Under Federal Pension Law* (the 1995 Exemption Publication). In addition to providing a brief overview of the exemption process, the 1995 Exemption Publication included definitions for technical terms such as "qualified independent fiduciary," "qualified independent appraiser," and "qualified appraisal report." These definitions, derived from conditions contained in previously granted exemptions, provided important guidance about the Department's standards concerning the independence, knowledge, and competence of third-party experts retained by a plan to review and/or oversee an exemption transaction, as well as the contents of the reports and representations ordinarily required from such experts.

During its first two decades of evaluating individual exemption requests, the Department observed that a significant proportion involved transactions, terms, and safeguards which were remarkably similar to those contained in previously granted exemptions. Accordingly, to facilitate the prompt consideration of such routine applications, the Department published an administrative class exemption, PTE 96–62 (61 FR 39988 (July 31, 1996), as amended at 67 FR 44622 (July 3, 2002)). Under this class exemption (commonly referred to as EXPRO), the Department may authorize exemptive relief, on an expedited basis, for certain prospective transactions that would otherwise be prohibited under ERISA, the Code, or FERSA, provided that the applicant satisfies all of the conditions of the EXPRO exemption. Among other things, PTE 96–62 stipulates that the transaction for which an applicant seeks authorization must be substantially similar in all material respects to at least two other transactions for which the Department recently granted administrative relief from the same restriction.[3] Under PTE 96–62, authorization may be available in as few as 78 days from the acknowledgement of the receipt by the Department of a written submission filed in accordance with the class exemption. From 1996 to 2009, more than 400 applicants obtained expedited relief from the Department pursuant to the requirements of PTE 96–62.

In the years since the current exemption procedure was adopted in 1990, the accelerated development and expanded usage of various electronic media for the transmission of information—including the Internet, electronic mail (e-mail), and facsimile machines—has provided the Department with more technologically advanced means for discharging its responsibilities to the public. This rapid transformation has also altered the manner in which the Department ordinarily processes and disseminates prohibited transaction exemptions. In 1996, the Department established a Web site, *http://www.dol.gov,* which featured the electronic posting of notices of proposed and final prohibited transaction exemptions as published in the **Federal Register**.[4] Shortly thereafter, the Department established a public e-mail portal on its Web site for ERISA-related questions and created individual e-mail accounts for its employees; these developments enabled exemption applicants and others to transmit exemption-related messages and documents to the Department on a virtually instantaneous basis.

In 2002, Congress enacted the E-Government Act (Pub. L. 107–347, 116 Stat. 2915) to facilitate Internet-based public access to, and participation in, the Federal rulemaking process; to implement the requirements of this statute, the Office of Management and Budget (OMB) launched a Web site, *http://www.regulations.gov,* in 2003. This Web site (which was upgraded in 2005 with the introduction of an electronic regulatory docket management system) enables individuals and organizations to access and comment upon proposed rulemaking documents issued by Federal agencies, as well as prohibited transaction exemptions proposed by the Department. In addition, the Department has recently established a dedicated e-mail address, *e-OED@dol.gov,* which permits interested persons to submit comments electronically concerning a proposed exemption.

The proposed regulation contained in this document updates the prohibited transaction exemption procedure to reflect changes in the Department's exemption practices since the current procedure was implemented in 1990. Among other things, key elements of the exemption policies and guidance currently found in ERISA Technical Release 85–1 and the 1995 Exemption Publication would be consolidated within the text of a unitary, comprehensive final regulation, thus reducing the regulatory burdens on applicants for exemptive relief. Adoption of these revised procedures should also encourage the prompt and fair consideration of all exemption applications by clarifying the types of information and documentation generally required for a complete filing, by affording expanded opportunities for the electronic submission of information and comments relating to an exemption, and by providing plan participants and other interested persons with a more thorough understanding of the exemption under consideration.

[3] Additional information concerning the requirements for obtaining administrative relief under PTE 96–62 (as amended) may be obtained by accessing the complete text of the class exemption at the Department's Web site: *http://www.dol.gov/ebsa/Regs/ClassExemptions.* A chronological listing of all final authorizations granted by the Department pursuant to PTE 96–62 since 1996 may also be found at: *http://www.dol.gov/ebsa/Regs/expro_exemptions.html.*

[4] In addition, the texts of all **Federal Register** notices relating to prohibited transaction exemptions published since 1995 are available in electronic format at the following Web site maintained by the U.S. Government Printing Office: *http://www.gpoaccess.gov/fr.*

B. Overview of Proposed Changes to the Exemption Procedure Regulation

The current exemption procedure regulation at 29 CFR part 2570, subpart B consists of 23 discrete sections (§ 2570.30 through § 2570.52), arranged by topic and generally reflecting the chronological order of steps involved in processing an exemption application. This proposed revision to the exemption procedure retains the section-by-section topical structure of the existing regulation, along with most of the operative language. However, the Department also proposes several important substantive amendments; these changes are summarized below on a section-by-section basis.

Section 2570.30 Scope of the Regulation

Section 2570.30(a) of the proposed regulation describes the statutory provisions of ERISA, the Code, and FERSA under which the Department is authorized to establish procedures governing the granting of administrative exemptions, and cites appropriately the Department's jurisdictional mandate pertaining to exemptions under Presidential Reorganization Plan No. 4 of 1978. A revised section 2570.30(b) describes the extent of exemptive relief generally permissible under section 408(a) of ERISA and corresponding sections of the Code and FERSA, including the availability (under limited circumstances) of retroactive relief for past prohibited transactions.

An updated § 2570.30(c) describes the authority of the Department to propose and issue administrative exemptions on its own motion. Currently, this authority is referenced somewhat awkwardly at the beginning of § 2570.32(a) under the section heading that describes "Persons who may apply for exemptions." Apart from repositioning this regulatory language, the revised § 2570.30(c) also specifies the provisions of the updated exemption procedure regulation generally applicable to exemptions initiated on the Department's own motion.

In addition, proposed § 2570.30(d) incorporates language found in the text of prior granted exemptions emphasizing that the scope of exemptive relief available from the Department does not extend to certain other fiduciary provisions of ERISA or to the exclusive benefit rule found in section 401(a) of the Code. Proposed sections 2570.30(e) and (f) replicate language in the current regulation relating to the provision of oral advice by Department employees concerning an exemption, and the handling of exemption applications that are filed solely under section 408(a) of ERISA or solely under section 4975(c)(2) of the Code.

Section 2570.31 Definitions

Section 2570.31 of the current exemption procedure regulation defines the following terms for purposes of the exemption procedures: Affiliate, class exemption, Department, exemption transaction, individual exemption, party in interest and pooled fund. The Department proposes to add three additional definitions, a qualified appraisal report, a qualified independent appraiser, and a qualified independent fiduciary, to the regulation. These three definitions are referred to in the glossary of the Department's 1995 Exemption Publication, and are commonly used in individual and class exemptions.

Section 2570.33 Applications the Department Will Not Ordinarily Consider

Under § 2570.33(c) of the current regulation, an application for an individual exemption ordinarily will not receive separate consideration if the Department is considering a class exemption relating to the same type of transaction or transactions. Under the proposed regulation, however, this general rule may be waived in instances where (i) the issuance of the final class exemption may not be imminent, and (ii) the applicant can demonstrate that exigent circumstances compel it to seek immediate exemptive relief from the Department in order to protect the interests of the plan and its participants (such as the sale of an illiquid asset that has decreased in value).

Section 2570.34 Information To Be Included in Every Exemption Application

Section 2570.34 of the current regulation describes the information to be included in every exemption application. An expanded § 2570.34(a)(2) would require the inclusion of a chronology of the events leading to the exemption transaction. In addition, as detailed below, section 2570.34 would be amended (through the addition of new subsections (c) and (d)) to incorporate key elements of the exemption policy and guidance currently found in the 1995 Exemption Publication, specifically with respect to the required content of the specialized statements that are obtained from independent appraisers and fiduciaries in support of an exemption transaction.

Statements from qualified independent appraisers—A new § 2570.34(c), setting forth the requirements for specialized statements from qualified, independent appraisers, would replace and clarify the content of section 2570.34(b)(5)(iii) of the existing regulation. This section requires that the independent appraisal report submitted by the appraiser on behalf of the plan be current and not more than one year old on the date of the transaction. Further, there must be a written update by the qualified independent appraiser reaffirming the accuracy of the prior appraisal as of the date of the transaction. If an appraisal report is a year old or more, a new appraisal must be submitted to the Department by the applicant. In addition, the appraisal must include the appraiser's rationale, credentials, and a statement regarding the appraiser's independence from the parties involved in the transaction. The appraiser would be required to submit a copy of its engagement letter with the plan (*i.e.,* the appraiser's client is the plan) outlining the appraiser's specific duties. Among other things, the appraiser's report must specify the valuation methodology applied by the appraiser, and should include documentation that supports the appraiser's conclusions on valuation. In addition, the applicant also must disclose the percentage of the appraiser's compensation that was derived from any party in interest (or any affiliate of the party in interest) involved in the exemption transaction. As a general matter, the appraisers retained in connection with an exemption transaction must not receive more than a *de minimis* amount of compensation from the parties in interest to the transaction or their affiliates.

Statements from qualified independent fiduciaries—A new § 2570.34(d), setting forth the requirements for specialized statements from qualified, independent fiduciaries, would replace and clarify the content of section 2570.34(b)(5)(iv) of the existing regulation. Many of the exemptions previously issued by the Department have been conditioned on the designation of an independent fiduciary who is qualified to represent the interests of the plan, particularly where the plan's named or other fiduciary has interests with respect to a transaction which may conflict with its fiduciary duties to the plan. Accordingly, certain past exemptions issued by the Department (generally involving non-complex transactions) have required the designation of an independent fiduciary or second fiduciary (*e.g.,* the employer or an officer of the employer who is

independent of the party engaging in the exemption transaction with the plan). *See,* for example, PTE 2008–01, 73 FR 3274 (Jan. 17, 2008) and PTE 2009–06, 74 FR 8992 (Feb. 27, 2009). However, even where an employer or a plan sponsor is independent of the parties engaging in the exemption transaction, such parties may nevertheless lack the expertise necessary to represent the interests of the plan in certain types of transactions. In such situations, the Department may condition relief upon the plan's retention of a "qualified independent fiduciary" who is neither the plan's named fiduciary nor a plan fiduciary who ordinarily provides fiduciary services to the plan. In such cases, the qualified independent fiduciary is responsible both for determining whether such transaction is in the interests of the plan and of its participants and beneficiaries, and for exercising its discretionary authority as to whether a plan should proceed with the transaction that is the subject of a prohibited transaction request.

Under § 2570.34(d), the Department would require the disclosure of the following information from a qualified independent fiduciary: A copy of such fiduciary's engagement letter with the plan describing the duties the fiduciary will undertake on behalf of the plan; a detailed explanation of why the proposed transaction is in the interests of the participants and beneficiaries; a statement that, in instances where the transaction is ongoing, the fiduciary agrees to monitor the proposed transaction throughout its duration on behalf of the plan, taking any appropriate action to safeguard the interests of the plan; what qualifications the fiduciary has to perform these duties on behalf of the plan and the level of ERISA experience the person has; and a representation to the effect that such fiduciary understands and acknowledges his or her ERISA duties and responsibilities in acting as a fiduciary on behalf of the plan. The fiduciary must also disclose if it is related in any way to the employer or its principals, as well as the percentage of its current compensation that was derived from any party in interest (or any affiliate of the party in interest) involved in the exemption transaction. As a general matter, an independent fiduciary retained in connection with an exemption transaction must receive no more than a *de minimis* amount of compensation from the parties in interest to the transaction or their affiliates.

Statements from other experts—A new § 2570.34(e) sets forth the content requirements for statements submitted by independent, third-party experts other than independent appraisers or fiduciaries. The new section would clarify the language currently found at section 2570.34(b)(5)(iii) of the existing regulation. This new section would also require: a copy of the expert's engagement letter with the plan (*i.e.,* the third-party expert's client is the plan) describing the specific duties the expert will undertake on behalf of a plan; a summary of the expert's qualifications to serve in such capacity (including the expert's training, experience, and facilities); and a detailed description of any relationship that the expert may have with the party in interest engaging in the transaction with the plan, or its affiliates, that may influence the actions of the expert.

Section 2570.35 Information To Be Included in Applications for Individual Exemptions Only

Sections 2570.35(a)(5), (6), and (7) of the current regulation requires exemption applications to disclose information regarding whether the applicant or any of the parties to the exemption transaction is or has been, within a specified number of years past, a defendant in any lawsuit or criminal action concerning conduct as a fiduciary or other party in interest with respect to any employee benefit plan (§ 2570.35(a)(5)), convicted of a crime described in section 411 of ERISA (§ 2570.35(a)(6)), or under investigation or examination or engaged in litigation or a continuing controversy with certain Federal agencies (§ 2570.35(a)(7)). Section 2570.35(a)(7) also requires disclosure of whether any plan affected by the exemption transaction has been under such investigation or examination, or has been engaged in litigation or a continuing controversy, and further obligates the applicant to submit copies of all correspondence with the specified Federal agencies regarding the substantive issues involved in such proceedings which relate to compliance with the provisions of ERISA, provisions of the Code relating to plans, or provisions of FERSA.

Disclosure of prior investigations, examinations, and lawsuits—In an effort to reduce administrative burdens on applicants, the Department proposes to amend § 2570.35(a)(5) so as not to require disclosure of lawsuits relating solely to routine benefit claims. In addition, the Department proposes to amend § 2570.35(a)(7) to permit an applicant to submit a brief statement describing the Federal investigation, examination, litigation or controversy involving the plan in lieu of the submission of all correspondence relating to such matters. However, the revised § 2570.35(a)(7) would reserve the Department's right to require the production of additional relevant information or documentation concerning any of these matters, and would stipulate that a denial of the exemption application will result if the additional requested information is not provided.

Disclosure of prior convictions—Under § 2570.35(a)(6) of the current regulation, an individual exemption application must describe whether an applicant or any of the parties in interest involved in the exemption transaction has, during the thirteen years preceding the application, been convicted of any crime described in section 411 of ERISA. Section 411, however, does not list all crimes that involve the abuse or misuse of a position of trust by a person with respect to client funds or securities. Accordingly, the Department proposes to amend this section by requiring individual exemption applications to disclose prior convictions of applicants or parties in interest involving the broader range of crimes described in section I(g) of PTE 84–14 (known as the QPAM class exemption) [5] that occurred in the thirteen years prior to the filing of the exemption application. Among other things, section I(g) of PTE 84–14 disqualifies certain individuals who have been convicted of felonies arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary from serving as a QPAM under the class exemption; in addition, the class exemption bars any individual convicted of a crime described in ERISA section 411 from serving as a QPAM. The Department believes that incorporating the disclosure of this additional information concerning the criminal records of the applicant and other parties in interest participating in the exemption transaction is necessary to evaluate the credibility and integrity of such parties, some of whom may possess substantial discretion regarding the exemption transaction or may make representations upon which the Department relies in determining whether the statutory criteria for an exemption have been satisfied.

Disclosure of payment of civil monetary penalties and excise taxes assessed by the Treasury and Labor Departments in connection with prior prohibited transactions—The current version of § 2570.35(a)(14)(v) requires

[5] *See* 49 FR 9494 (March 13, 1984), as amended by 70 FR 49305 (August 23, 2005).

an applicant to disclose whether any excise taxes due under sections 4975(a) and (b) of the Code by reason of a consummated exemption transaction have been paid. The Department proposes to amend this provision to also require disclosure as to whether any civil monetary penalties due under section 502(i) or (l) of ERISA have been paid. In addition, the applicant would be required to furnish documentary evidence (such as a cancelled check) demonstrating payment of all applicable excise taxes or civil penalties.

Disclosure of party-in-interest investments—The general purpose of the disclosure provision at § 2570.35(a)(16) is to enable the Department to determine whether the exemption transaction, in conjunction with other plan investments involving parties in interest, would unduly concentrate the plan's assets in certain investments so as to raise questions under the fiduciary responsibility provisions of section 404 of ERISA. Under the current version of § 2570.35(a)(16), the extent of applicant disclosure is limited to whether or not the assets of the affected plan(s) are invested in loans to any party in interest involved in the exemption transaction, property leased to any such party in interest, or securities issued by any party in interest involved in the exemption transaction. Where such investments exist, the current regulation requires an applicant to include an additional statement detailing the nature and extent of these investments, and whether a statutory or administrative exemption covers such investments. In the interest of greater transparency, the Department proposes to amend this section to require an applicant to disclose whether or not the assets of the affected plan(s) have been invested directly or indirectly in any other transactions (*e.g.,* securities lending or extensions of credit), whether exempt or non-exempt, with the party in interest involved in the exemption transaction; accordingly, such disclosure would not be limited to plan investments in loans or leases involving the party in interest, or securities issued by the party in interest. In cases where any such investments exist, the applicant must also provide the Department with additional information describing, among other things: (1) The type of investment to which the statement pertains; (2) The aggregate fair market value of all investments of this type as reflected in the plan's most recent annual report; (3) The approximate percentage of the fair market value of the plan's total assets as shown in such annual report that is represented by all investments of this type; and (4) The applicable statutory or administrative exemption covering these investments (if any).

Disclosure of net worth statement—The Department proposes to add a new subsection (§ 2570.35(b)(4)) which would require that each application for an individual exemption furnish a net worth statement for any party in interest that provides a personal guarantee with respect to an exemption transaction.

Retroactive exemptions—The Department proposes the addition of a new subsection, § 2570.35(d), to provide guidance to applicants who are seeking retroactive relief for past prohibited transactions. This new subsection would incorporate the standards for retroactive exemptions issued by the Department in ERISA Technical Release 85–1 (January 22, 1985). The Department believes that the inclusion of these standards as part of an updated and comprehensive exemption procedure regulation will provide greater clarity to applicants for retroactive relief, thereby facilitating the prompt evaluation of such applications. Among other things, the new subsection reaffirms that, as a general matter, the Department will only consider granting retroactive relief for transactions already entered into where an applicant can satisfactorily demonstrate that the safeguards necessary for the grant of a prospective exemption were in place at the time of the consummated transaction. In this regard, an applicant should provide evidence that it acted in good faith at the time of the subject transaction by taking reasonable and appropriate steps to protect the plan from abuse and unnecessary risk. The new subsection also enumerates a variety of objective considerations that the Department ordinarily takes into account when evaluating whether the conduct of the applicant at the time of a previously consummated transaction satisfies the good faith standard.

Section 2570.36 Where To File an Application

The Department is revising this section to apprise applicants of the fax and e-mail information necessary to expedite delivery of the application or any other relevant information relating to the application. In addition, the Department is amending this section to require applicants to submit two paper copies of applications: One for the Department's file and one for the analyst's working copy, as well as an electronic version of the application.

Section 2570.37 Duty To Amend and Supplement Exemption Application

As in the current regulation, this section would require an applicant to notify the Department in writing if it discovers that any material fact or representation contained in the application or in any documents or testimony provided in support of the application is inaccurate, if any such fact or representation changes during this period, or if, during the pendency of the application, anything occurs which may affect the continuing accuracy of such fact or representation. The Department proposes to amend this section to clarify that an applicant must also notify the Department of any material fact or representation that has been omitted from the exemption application. The determination whether, under the totality of the facts and circumstances, a particular statement contained in (or omitted from) an exemption application constitutes a material fact or representation is made by the Department. To the extent that a material representation is omitted, becomes inaccurate or changes, the prohibited transaction exemptive relief will no longer be available starting on the first day on which any one of these events occur.

Section 2570.39 Opportunities To Submit Additional Information

Under the current rule, in instances where the Department has issued a tentative denial letter to an applicant pursuant to § 2570.38 and the applicant has timely notified the Department of its intent to submit additional written information in support of the exemption application, the applicant must submit such information within 30 days from the date on which it expressed its intent to provide the information. In order to promote the uniform and efficient consideration of such additional information, the Department proposes to amend this section by requiring that the applicant submit the additional written information within 40 days from the date of the tentative denial letter. An applicant may only request an extension of time to submit the additional information in situations where reasons beyond its control render it unable to furnish the information within the 40-day limit. Such requests for an extension of time for the submission of additional information also must be made by the applicant before the expiration of the foregoing 40-day period. The Department will only grant such requests for extension in unusual circumstances and for a limited period of time as determined, respectively, by

the Department in its sole discretion. If the applicant is unable to timely submit such additional written information, the Department will issue a final denial letter pursuant to § 2570.41. The Department proposes to further amend § 2570.39 to indicate that the applicant may notify the Department of its intent to submit additional information electronically via the e-mail address provided in the tentative denial letter.

Section 2570.40 Conferences

Under the current rule, the Department will attempt to schedule (in response to a request made by an applicant under § 2570.38(b)) a conference concerning a tentative denial letter within the 45-day period following the later of (1) the date the Department receives the applicant's request for a conference, or (2) the date the Department notifies the applicant, after reviewing additional information submitted pursuant to § 2570.39, that it is not prepared to propose the requested exemption. The Department proposes to amend this section by substituting a simplified procedure that is intended to facilitate the prompt and efficient scheduling of such conferences. In instances where the applicant has expressed both a request for a conference and an intent to submit additional information in support of the application, pursuant to proposed § 2570.39, the Department would schedule a conference at a mutually convenient date and time that occurs within 20 days after the date on which the Department has provided notification to the applicant that it remains unprepared to propose the requested exemption based upon the additional information submitted by the applicant. Alternatively, in instances where the applicant requests a conference without expressing an intent to submit additional information pursuant to proposed § 2570.39, the Department would schedule a conference at a mutually convenient date and time that occurs within 40 days after the date of the issuance of the tentative denial letter. An applicant may only request an extension of time to schedule a conference in situations where reasons beyond its control render it unable to attend a conference within the foregoing time frames. Such requests for an extension of time for scheduling a conference must also be made before the expiration of the respective 20-day and 40-day periods. The Department will only grant such requests for extension in unusual circumstances and for a brief period of time as determined, respectively, by the Department in its sole discretion.

Under the current rule, in instances where a conference has already been held, the applicant may submit to the Department within 20 days of the conference any additional data, arguments, or precedents discussed at the conference but not previously or adequately presented in writing. The Department proposes to amend this provision by permitting the applicant to request an extension of time for the submission of this additional information where reasons beyond the applicant's control render it unable to submit the information within the foregoing 20-day limit. Such requests for an extension must be made before the expiration of the 20-day period. The Department will only grant such requests for extension in unusual circumstances and for a brief period of time as determined, respectively, by the Department in its sole discretion.

Section 2570.42 Notice of Proposed Exemption

Under section 2570.42 of the proposed regulation, the Department would publish a notice of proposed exemption in the **Federal Register** if, after reviewing the record pertaining to the exemption transaction (including any information submitted by an applicant), the Department tentatively concludes that the proposed exemption satisfies the statutory criteria for the granting of an exemption. In addition to providing notice of the pendency of the exemption before the Department, the revised section would describe the contents of the notice of proposed exemption.

Section 2570.43 Notification of Interested Persons by Applicant

Section 2570.43 of the current regulation describes the methods that an applicant may use to notify interested persons of a proposed exemption and the required content of the notice. In addition to a copy of the Notice of Proposed Exemption published in the **Federal Register**, the applicant must include in the notification to interested persons a supplemental statement. Section 2570.43 also states that, once the Department has published a notice of proposed exemption, the applicant must notify the interested persons described in the application in the manner indicated in the application unless the Department has informed the applicant beforehand that it considers the method of notification described in the application to be inadequate. Where the Department has determined the proposed method of notification to be inadequate, the applicant must obtain the Department's consent as to the manner and time period of providing the notice to interested persons. After furnishing notification, an applicant must provide the Department with a declaration under penalty of perjury certifying that notice was given to the persons and in the time and manner that the Department deems adequate.

Supplemental statement—The Department proposes to modify the current text of the supplemental statement by expressly permitting interested persons to submit comments or requests for a hearing concerning a proposed exemption electronically (at either *e-OED@dol.gov* or *http://www.regulations.gov*) or by facsimile. The supplemental statement also would be modified to contain a statement advising those individuals submitting comments or requests for a hearing on an exemption to refrain from disclosing sensitive personal data, such as Social Security numbers.

Methods of providing notice—Under the current regulation, the method used by an applicant to furnish notice to interested persons must be reasonably calculated to ensure that such persons actually receive the notice. In all cases, personal delivery and delivery by first-class mail are considered reasonable methods of providing notice. The Department proposes to amend this provision to also permit applicants to utilize electronic means (such as e-mail) to deliver notice to interested persons of a pending exemption, provided that the applicant can satisfactorily prove electronic delivery to the entire class of interested persons.

Summary of proposed exemption—Since the current exemption procedure was adopted in 1990, the Department has noted that recipients of the Notice of Proposed Exemption and supplemental statement sometimes have difficulty understanding these documents. Many recipients, especially plan participants, contact the Department to express concern that their benefits under the plan may be adversely affected by the exemption transaction. As a consequence, the Department devotes considerable time explaining to plan participants and beneficiaries the basis for the proposed exemption and informing plan participants and beneficiaries of their right to submit written comments to the Department relating to the proposed exemption.

In order to provide notice recipients with a clearer understanding of the exemption transaction under consideration, the Department proposes to amend § 2570.43 (through addition of new subsections (d) and (e)) to require that certain exemption applicants (*e.g.,*

those seeking exemptive relief for relatively complex transactions) provide notice recipients with an additional statement that succinctly explains the essential facts and circumstances surrounding the proposed exemption. This additional supplementary statement, to be known as a Summary of Proposed Exemption (SPE), must be written in a manner calculated to be understood by the average recipient. Among other things, the SPE must objectively describe the exemption transaction and the parties thereto, the reasons why the plan seeks to engage in the transaction, and the conditions and safeguards proposed to protect the plan and its participants from potential abuse or unnecessary risk of loss in the event the Department grants the exemption. Applicants who are directed to provide interested persons with an SPE would also be required to furnish the Department with a copy of such summary for review prior to its distribution to interested persons.

Sections 2570.44 Withdrawal of Exemption Application

Section 2570.44 has been modified to clarify that if an applicant chooses to withdraw an application for exemption, such withdrawal generally shall not prejudice any subsequent applications for exemption filed by the applicant.

Sections 2570.46 and 2570.47 Hearings

Under § 2570.46 of the current regulation, the Department requires that persons who may be adversely affected by the grant of an exemption from the fiduciary self-dealing provisions of section 406(b) of ERISA and corresponding sections of the Code and FERSA must be given an opportunity to demonstrate the existence of issues that can only be fully explored in the context of a hearing. When persuasive evidence of the existence of such issues is provided, the Department will grant the requested hearing. This procedure is consistent with the requirements of ERISA section 408(a), which precludes the Department from granting an exemption from the fiduciary self-dealing restrictions unless the Department affords an opportunity for a hearing and makes a determination on the record with respect to the three statutory findings required for granting an exemption. In addition, under § 2570.47 of the current regulation, the Department may schedule a hearing on its own motion concerning a proposed exemption if it determines that such a hearing would be useful in exploring issues relevant to the exemption.

Prior notice of a hearing on an exemption application has always been provided by the Department, and is also implicit in the existing language of § 2570.46(c) and § 2570.47(b), under which an applicant may satisfy its own notice of hearing obligations to interested persons by furnishing such individuals with a copy of the hearing notice previously published by the Department in the **Federal Register** (provided that such copy is provided by the applicant within 10 days of its publication by the Department). The current language of the regulation, however, does not make clear the Department's obligation to provide notice of a hearing in connection with an administrative exemption that was proposed by the Department on its own motion. Accordingly, the texts of § 2570.46(b) and § 2570.47(a) would be modified to state expressly that, in instances where a hearing on a proposed exemption is indicated, the Department will publish a notice of such hearing in the **Federal Register**.

Section 2570.48 Grant of Exemption

Section 2570.48 of the proposed regulation describes the standards that must be satisfied for the Department to grant a final exemption. The language of the current exemption procedure regulation inadvertently omits the statutory requirement contained in both section 408(a) of ERISA and section 4975(c)(2) of the Code which stipulates that, prior to granting an exemption, the Department must make a finding that such relief is (1) administratively feasible, (2) in the interests of the plan's participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of the plan. Accordingly, the text of the proposed regulation has been revised to conform to this statutory mandate.[6] In adopting this change, however, the Department wishes to emphasize that the tripartite administrative findings stipulated in section 408(a) of ERISA and/or section 4975(c)(2) of the Code have always constituted an integral part of the record in each of its prior exemption grants. In addition, the language of § 2570.48 has been broadened to encompass not only exemptions granted to applicants, but also exemptions that were initiated through the Department's own motion.

[6] Apart from the satisfaction of this statutory prerequisite, the legislative history of ERISA makes it clear that the Department retains broad discretion in determining whether the grant of an exemption is appropriate in a particular instance. H.R. Rep. No. 1280, 93d Cong., 2d Sess. 311 (1974).

Section 2570.49 Limits to the Effect of Exemptions

Under § 2570.49(a), (b) and (c) of the current regulation, the Department describes the limits on the effect of exemptions. This section would be amended by adding a new subsection (d) stipulating that, for transactions that are continuing in nature, an exemption does not protect parties in interest from liability with respect to an exemption transaction if, subsequent to the granting of an exemption, there are material changes to the original facts and representations underlying such exemption or if one or more of the exemption's conditions are not met.

Thus, for example, in the case of a continuing exemption transaction such as a loan or a lease, if any of the material facts were to change after the exemption is granted, the exemption would cease to apply as of the date of such change. In the event of any such change, the parties in interest involved in the exemption transaction may apply for a new exemption to protect themselves from liability on or after the date of such change.

C. Request for Comments

The Department invites comments from interested persons on all aspects of the proposed regulation. Comments should be addressed to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Prohibited Transaction Exemption Procedures Proposed Regulation. Commenters are encouraged to submit their comments electronically to *e-OED@dol.gov* or *http://www.regulations.gov* (follow instructions for submission of comments). All written responses 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, Room N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Comments on this proposal should be submitted to the Department on or before October 14, 2010.

D. Regulatory Impact Analysis

Executive Order 12866

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 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. Pursuant to the terms of the Executive Order, it has been determined that this action is not "significant" within the meaning of section 3(f) of the Executive Order and therefore is not subject to review by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the Proposed Rule for the Prohibited Transaction Exemption Procedures. A copy of the ICR may be obtained by contacting the person listed in the PRA Addressee section below.

The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department is particularly interested in comments that:

(A) 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;

(B) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(C) Enhance the quality, utility, and clarity of the information to be collected; and

(D) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through October 29, 2010, OMB requests that comments be received within 30 days of publication of the Proposed Rule for the Prohibited Transaction Exemption Procedures to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. *Telephone:* (202) 693–8410; *Fax:* (202) 219–5333. These are not toll-free numbers. A copy of the ICR also may be obtained at *http://www.RegInfo.gov.*

Background

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules. In addition, section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of ERISA sections 406 and 407(a), while section 4975(c)(2) of the Code authorizes the Secretary of the Treasury or his delegate to grant exemptions from the prohibitions of Code section 4975(c)(1). Sections 408(a) of ERISA and 4975(c)(2) of the Code also direct the Secretary of Labor and the Secretary of the Treasury, respectively, to establish procedures to carry out the purposes of these sections.

Under section 3003(b) of ERISA, the Secretary of Labor and the Secretary of the Treasury are directed to consult and coordinate with each other with respect to the establishment of rules applicable to the granting of exemptions from the prohibited transaction restrictions of ERISA and the Code. Under section 3004 of ERISA, moreover, the Secretary of Labor and the Secretary of the Treasury are authorized to develop jointly rules appropriate for the efficient administration of ERISA.

Under section 102 of Reorganization Plan No. 4 of 1978 (Reorganization Plan No. 4), the foregoing authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code was transferred, with certain enumerated exceptions not discussed herein, to the Secretary of Labor. Accordingly, the Secretary of Labor now possesses the authority under section 4975(c)(2) of the Code, as well as under section 408(a) of ERISA, to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

On April 28, 1975, the Department published ERISA Procedure 75–1 in the **Federal Register** (40 FR 18471). This procedure provided necessary information to the affected public regarding the procedure to follow when requesting an exemption. On August 10, 1990, the Department issued its current exemption procedure regulation, which replaced ERISA Procedure 75–1, for applications for prohibited transaction exemptions filed on or after September 10, 1990. (29 CFR 2570.30 *et seq.,* 55 FR 32836, Aug. 10, 1990).

Under the current exemption procedure regulation, in order to make exemption determinations, the Department requires full information regarding all aspects of the transaction, the parties, and the assets involved, which is an information collection request (ICR) for purposes of the PRA. Sections 2570.34 and 2570.35 of the current exemption procedure regulation describe the information that must be supplied by the applicant, such as: Identifying information (name, type of plan, EIN number, etc.); an estimate of the number of plan participants; a detailed description of the exemption transaction and the parties for which an exemption is requested; a statement regarding which section of ERISA is thought to be violated and whether transaction(s) involved have already been entered into; a statement of whether the transaction is customary in the industry; a statement of the hardship or economic loss, if any, which would result if the exemption were denied; a statement explaining why the proposed exemption would be administratively feasible, in the interests of the plan and protective of the rights of plan participants and beneficiaries; and several other statements. In addition, the applicant must certify that the information supplied is accurate and complete.

The amended rule proposed by the Department would expand the ICR contained in sections 2570.34 and 2570.35 of the current exemption procedure regulation in several respects. For instance, the current requirement of specialized statements from qualified independent appraisers, where applicable, would be clarified to include the appraiser's rationale, credentials, and a statement regarding the appraiser's independence from the parties involved in the transaction. In this connection, the appraisal report prepared by the independent appraiser must be current and not more than one year old as of the date of the transaction. In addition, the content of specialized statements submitted by qualified independent fiduciaries, where applicable, would be clarified to require the disclosure of information concerning the independent fiduciary's qualifications, duties, independence from the parties involved in the transaction, and current compensation. The content of specialized statements from other kinds of experts would also be clarified in the new regulation to require disclosure of information concerning the expert's qualifications and their independence from the parties involved in the transaction.

In addition, a new requirement contained in section 2570.43(d) and (e) of the proposal, if adopted, would provide the Department with the discretion to require an applicant to furnish interested persons with a Summary of Proposed Exemption (SPE). The Department expects this requirement to be used in instances where the proposed transaction is relatively complex, and the notice of proposed exemption may not be readily understandable by interested persons (*i.e.,* participants and beneficiaries) because of the complexity of the transaction. Among other things, the SPE must objectively describe the exemption transaction and the parties thereto, the reasons why the plan seeks to engage in the transaction, and the conditions and safeguards proposed to protect the plan and its participants from potential abuse or unnecessary risk of loss in the event the Department grants the exemption, and be written in a manner calculated to be understood by the average recipient. Applicants who must provide interested persons with an SPE also would be required to furnish the Department with a copy of the SPE for its review and approval before the SPE is distributed to interested persons.

Finally, the Department also proposes to amend § 2570.43 to permit applicants to utilize electronic means (such as e-mail) to deliver notice to interested persons of a pending exemption, provided that the applicant can demonstrate satisfactory proof of electronic delivery to the entire class of interested persons.

In order to assess the hour and cost burden of the revision to the current ICR associated with the exemption procedure regulation, the Department updated its estimate of the number of exemption requests it expects to receive and the hour and cost burden associated with providing information required to be submitted by applicants, including the new information required under this proposal. The Department also adjusted its estimate of the labor rates for professional and clerical help, and the size of plans filing exemption requests with the Department. In the revised estimate, the costs of hiring outside service providers (such as, law firms specializing in ERISA, outside appraisers, and financial experts) are accounted for as a cost burden. Requirements related to these services are more explicitly specified in the proposed rule than they were in the previous procedure, and any paperwork costs associated with these requirements are built into the estimated fees for outside services. Additionally, mailing costs of the application are now built into the fees of the outside firm, as are costs for the new SPEs required under the proposal in certain circumstances.

Annual Hour Burden

Between 2005 and 2008, the Department received an average of 56 requests annually for prohibited transaction exemptions. For purposes of this analysis, the Department assumes that approximately the same number of applications will be received annually over the next three years.[7] The paperwork burden consists of the time required to prepare the information the outside legal counsel will use to prepare and submit an application for exemption and notice of an application to interested persons. Because notices are only distributed once a proposed application for an exemption has been published in the **Federal Register**, the Department estimates, based on the number of notices published between 2005 and 2008, that 25 applications annually will proceed to the notice stage.

The Department estimates that, on average, 10 hours of in-house legal professional and 10 hours of in-house clerical time will be spent preparing the documentation for the application that will be used by the outside counsel. Therefore, the Department estimates that preparing the application will require 560 in-house legal professional hours (56 applications times 10 hours) and 560 clerical hours (56 applications times 10 hours) for a total of 1,120 hours at an equivalent cost of $79,861.[8]

For the notice to interested persons, the Department estimates that 25 applications will be published annually, and that approximately 17,175 notices to interested parties will be distributed.[9] The Department estimates the 5 minutes of clerical time will be spent assisting outside counsel with distribution of the notices. Therefore, distribution of notices will require approximately 1,431 hours at an equivalent cost of $36,740 ((5 minutes/60 minutes) times 17,175 times $25.67, the hourly clerical rate).

Annual Cost Burden

An application for a prohibited transaction exemption generally is prepared and submitted by, or under the direction of, attorneys with specialized knowledge of ERISA. The Department assumes that these same attorneys will also prepare and distribute the notice to interested persons. Because of the large amount of paperwork that is prepared and submitted (applications average approximately 60 pages with varying numbers of supporting documents), the Department estimates that legal fees will total approximately $17,500 on average per case. This estimate includes potential meetings with DOL personnel as well as preparation of supplementary documents that are requested following some of these meetings and an SPE for some of the more complex cases. The Department estimates that the costs for the combined services of the qualified independent fiduciary and appraiser/expert will total approximately $10,000.

[7] This number excludes applications seeking expedited exemptive relief under Prohibited Transaction Class Exemption 96–62. The estimated burden hours associated with PTE 96–62 are provided in a separate ICR under OMB Control Number 1210–0098.

[8] The hourly wage estimates used in this analysis are estimates for 2008 and are based on data from the Bureau of Labor Statistics National Occupational Employment Survey (May 2008) and the Bureau of Labor Statistics Employment Cost Index (March 2009). Total labor costs (wages plus benefits plus overhead) for clerical staff were estimated to average $25.67 per hour over the period based on metropolitan wage rates for clerical staff. Total labor cost for legal staff was estimated to average $116.93 per hour based on metropolitan wage estimates for attorneys. The 560 clerical hours are estimated to cost $14,375 and the 560 legal professional hours $65,486. This totals to $79,861.

[9] Based on a weighted average of 2006 Form 5500 Pension data. The data is split into plans with more than 100 participants and those with fewer than 100 participants. The Department estimates that half of the applications are from small plans (those with less than 100 participants) and half from larger plans (those with 100 or more participants). This gives a weighted average of 687 participants per plan, which when multiplied by 25 yields 17,175.

The new requirements contained in the proposal are incorporated into these cost estimates. Thus, the Department estimates that the cost per exemption application of the outside law firm, independent fiduciary, and appraiser/expert will be approximately $27,500, which when multiplied by the estimated 56 cases is expected to result in a cost burden of approximately $1,540,000.

The Department estimates that 17,175 notices to interested persons will be sent, and that 13,470 of the notices (80 percent) will distributed via first class mail with a material cost of $.05 per page and distribution costs of $.44 per notice. This generates an estimated cost of $6,733. The Department further estimates that 2,576 of the notices (15 percent of the total number of notices) will be distributed electronically and 859 (5 percent) will be distributed by alternative means approved by the Department.[10]

The Department estimates that SPEs will be requested with respect to 8 submissions (15% of the 56 submissions) per year, and that the SPEs will be sent with the notices. Based on an average plan size of 687 participants per plan, this results in the distribution of 5,496 SPEs, of which 4,397 (80 percent) will be mailed. The material cost associated with mailing the 4,397 SPEs at $.05 per page is $220. Therefore, the total cost burden for distribution of the notices and SPEs is estimated to be approximately $6,953 ($6,733 for the notices + $220 for the cost of including the SPEs).

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Proposed Rule for Prohibited Transaction Exemption Procedures.

OMB Number: 1210–0060.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 56.

Responses: 22,727.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 2,551.

Estimated Total Annual Burden Cost: $1,546,953.

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 the head of an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact.

For purposes of the RFA, the Department continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[11] Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Department believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The Department therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

By this standard, the Department estimates that nearly half the requests for exemptions are from small plans. Thus, of the approximately 613,000 ERISA-covered small plans, the Department estimates that 28 small plans (.000046% of small plans) file prohibited transaction exemption applications each year. The Department does not consider this to be a substantial number of small entities. Therefore, based on the foregoing, pursuant to section 605(b) of RFA, the Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Department invites comments on this certification and the potential impact of the rule on small entities.

Congressional Review Act

The proposed rule being issued here will, when finalized, be subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the proposed rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million or more, adjusted for inflation, on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, or the relationship between the national government and the 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 rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Federal Employees' Retirement System Act, Exemptions, Fiduciaries, Party in interest, Pensions, Prohibited transactions, Trusts and trustees.

[10] The Department notes that it determines whether it is appropriate to distribute notices by means other than mailing on a case-by-case basis.

[11] The basis for this definition is found in section 104(a)(2) of the Act, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

For the reasons set forth in the preamble, the Department proposes to amend subchapter G, part 2570 of chapter XXV of title 29 of the Code of Federal Regulations as follows:

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

1. The authority citation for part 2570 reads as follows:

Authority: 5 U.S.C. 8477; 29 U.S.C. 1002(40), 1021, 1108, 1132, and 1135; sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR 332 (1978), *reprinted in* 5 U.S.C. app. at 672 (2006), *and in* 92 Stat. 3790 (1978); Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

2. Revise subpart B to part 2570 to read as follows:

Subpart B—Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications

Sec.

Subpart B—Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications

§ 2570.30 Scope of rules.

(a) The rules of procedure set forth in this subpart apply to prohibited transaction exemptions issued by the Department under the authority of:

(1) Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA);

(2) Section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code); [1] or

(3) The Federal Employees' Retirement System Act of 1986 (FERSA) (5 U.S.C. 8477(c)(3)).

(b) Under these rules of procedure, the Department may conditionally or unconditionally exempt any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 of ERISA and the corresponding restrictions of the Code and FERSA. While administrative exemptions granted under these rules are ordinarily prospective in nature, an applicant may also obtain retroactive relief for past prohibited transactions if certain safeguards described in this subpart were in place at the time the transaction was consummated.

(c) These rules govern the filing and processing of applications for both individual and class exemptions that the Department may propose and grant pursuant to the authorities cited in paragraph (a) of this section. The Department may also propose and grant exemptions on its own motion, in which case the procedures relating to publication of notices, hearings, evaluation and public inspection of the administrative record, and modification or revocation of previously granted exemptions will apply.

(d) The issuance of an administrative exemption by the Department under these procedural rules does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA, the Code, or FERSA, including any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(e) The Department will not propose or issue exemptions upon oral request alone, nor will the Department grant exemptions orally. An applicant for an administrative exemption may request and receive oral advice from Department employees in preparing an exemption application. However, such advice does not constitute part of the administrative record and is not binding on the Department in its processing of an exemption application or in its examination or audit of a plan.

(f) The Department will generally treat any exemption application that is filed solely under section 408(a) of ERISA or solely under section 4975(c)(2) of the Code as an exemption request filed under both section 408(a) and section 4975(c)(2) if it relates to a transaction that would be prohibited both by ERISA and the corresponding provisions of the Code.

§ 2570.31 Definitions.

For purposes of these procedures, the following definitions apply:

(a) An *affiliate* of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any director of, relative of, or partner in, any such person;

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner; and

(4) Any employee or officer of the person who—

(i) Is highly compensated (as defined in section 4975(e)(2)(H) of the Code), or

(ii) Has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

(b) A *class exemption* is an administrative exemption, granted under section 408(a) of ERISA, section 4975(c)(2) of the Code, and/or 5 U.S.C. 8477(c)(3), which applies to any parties in interest within the class of parties in interest specified in the exemption who meet the conditions of the exemption.

(c) *Department* means the U.S. Department of Labor and includes the Secretary of Labor or his or her delegate exercising authority with respect to prohibited transaction exemptions to which this subpart applies.

(d) *Exemption transaction* means the transaction or transactions for which an exemption is requested.

(e) An *individual exemption* is an administrative exemption, granted under section 408(a) of ERISA, section 4975(c)(2) of the Code, and/or 5 U.S.C. 8477(c)(3), which applies only to the specific parties in interest named or otherwise defined in the exemption.

[1] Section 102 of Presidential Reorganization Plan No. 4 of 1978 (3 CFR 332 (1978), *reprinted in* 5 U.S.C. app. at 672 (2006), *and in* 92 Stat. 3790 (1978)), effective December 31, 1978, generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Department of Labor.

(f) A *party in interest* means a person described in section 3(14) of ERISA or 5 U.S.C. 8477(a)(4) and includes a *disqualified person,* as defined in section 4975(e)(2) of the Code.

(g) *Pooled fund* means an account or fund for the collective investment of the assets of two or more unrelated plans, including (but not limited to) a pooled separate account maintained by an insurance company and a common or collective trust fund maintained by a bank or similar financial institution.

(h) A *qualified appraisal report* is any appraisal report that satisfies all of the requirements set forth in this subpart at § 2570.34(c)(4).

(i) A *qualified independent appraiser* is any individual or entity with appropriate training, experience, and facilities to provide a qualified appraisal report on behalf of the plan regarding the particular asset or property appraised in the report, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates; the determination as to the independence of the appraiser is made by the Department on the basis of all relevant facts and circumstances. As a general matter, an independent appraiser retained in connection with an exemption transaction must not receive more than a *de minimis* amount of compensation (including amounts received for performing the appraisal) from the parties in interest to the transaction or their affiliates. For purposes of determining whether the compensation received by the appraiser is *de minimis,* all compensation received by the appraiser is taken into account. Such *de minimis* amount will ordinarily constitute 1% or less of the annual income of the qualified independent appraiser. In all events, the burden is on the applicant to demonstrate the independence of the appraiser.

(j) A *qualified independent fiduciary* is any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates; the determination as to the independence of a fiduciary is made by the Department on the basis of all relevant facts and circumstances. As a general matter, an independent fiduciary retained in connection with an exemption transaction must receive no more than a *de minimis* amount of compensation (including amounts received for preparing fiduciary reports and other related duties) from the parties in interest to the transaction or their affiliates. For purposes of determining whether the compensation received by the fiduciary is *de minimis,* all compensation received by the fiduciary is taken into account. Such *de minimis* amount will ordinarily constitute 1% or less of the annual income of the qualified independent fiduciary. In all events, the burden is on the applicant to demonstrate the independence of the fiduciary.

§ 2570.32 Persons who may apply for exemptions.

(a) The Department will initiate exemption proceedings upon the application of:

(1) Any party in interest to a plan who is or may be a party to the exemption transaction;

(2) Any plan which is a party to the exemption transaction; or

(3) In the case of an application for an exemption covering a class of parties in interest or a class of transactions, in addition to any person described in paragraphs (a)(1) and (a)(2) of this section, an association or organization representing parties in interest who may be parties to the exemption transaction.

(b) An application by or for a person described in paragraph (a) of this section, may be submitted by the applicant or by an authorized representative. An application submitted by a representative of the applicant must include proof of authority in the form of:

(1) A power of attorney; or

(2) A written certification from the applicant that the representative is authorized to file the application.

(c) If the authorized representative of an applicant submits an application for an exemption to the Department together with proof of authority to file the application as required by paragraph (b) of this section, the Department will direct all correspondence and inquiries concerning the application to the representative unless requested to do otherwise by the applicant.

§ 2570.33 Applications the Department will not ordinarily consider.

(a) The Department will not ordinarily consider:

(1) An application that fails to include all the information required by §§ 2570.34 and 2570.35 of this subpart or otherwise fails to conform to the requirements of these procedures; or

(2) An application involving a transaction or transactions which are the subject of an investigation for possible violations of part 1 or 4 of subtitle B of Title I of ERISA or section 8477 or 8478 of FERSA or an application involving a party in interest who is the subject of such an investigation or who is a defendant in an action by the Department or the Internal Revenue Service to enforce the above-mentioned provisions of ERISA or FERSA.

(b) An application for an individual exemption relating to a specific transaction or transactions ordinarily will not be considered if the Department has under consideration a class exemption relating to the same type of transaction or transactions. Notwithstanding the foregoing, the Department may consider an application for an individual exemption where there is a pending class exemption if the issuance of the final class exemption may not be imminent, and the applicant can demonstrate that time constraints necessitate consideration of the transaction on an individual basis.

(c) If for any reason the Department decides not to consider an exemption application, it will inform the applicant of that decision in writing and of the reasons therefore.

§ 2570.34 Information to be included in every exemption application.

(a) All applications for exemptions must contain the following information:

(1) The name(s) of the applicant(s);

(2) A detailed description of the exemption transaction including identification of all the parties in interest involved, a description of any larger integrated transaction of which the exemption transaction is a part, and a chronology of the events leading up to the transaction;

(3) The identity of any representatives for the affected plan(s) and parties in interest and what individuals or entities they represent;

(4) The reasons a plan would have for entering into the exemption transaction;

(5) The prohibited transaction provisions from which exemptive relief is requested and the reason why the transaction would violate each such provision;

(6) Whether the exemption transaction is customary for the industry or class involved;

(7) Whether the exemption transaction is or has been the subject of an investigation or enforcement action by the Department or by the Internal Revenue Service; and

(8) The hardship or economic loss, if any, which would result to the person or persons on behalf of whom the exemption is sought, to affected plans, and to their participants and

beneficiaries from denial of the exemption.

(b) All applications for exemption must also contain the following:

(1) A statement explaining why the requested exemption would be—

(i) Administratively feasible;

(ii) In the interests of affected plans and their participants and beneficiaries; and

(iii) Protective of the rights of participants and beneficiaries of affected plans.

(2) With respect to the notification of interested persons required by § 2570.43:

(i) A description of the interested persons to whom the applicant intends to provide notice;

(ii) The manner in which the applicant will provide such notice; and

(iii) An estimate of the time the applicant will need to furnish notice to all interested persons following publication of a notice of the proposed exemption in the **Federal Register**.

(3) If an advisory opinion has been requested by any party to the exemption transaction from the Department with respect to any issue relating to the exemption transaction—

(i) A copy of the letter concluding the Department's action on the advisory opinion request; or

(ii) If the Department has not yet concluded its action on the request:

(A) A copy of the request or the date on which it was submitted together with the Department's correspondence control number as indicated in the acknowledgment letter; and

(B) An explanation of the effect of the issuance of an advisory opinion upon the exemption transaction.

(4) If the application is to be signed by anyone other than an individual party in interest seeking exemptive relief on his or her own behalf, a statement which—

(i) Identifies the individual signing the application and his or her position or title; and

(ii) Explains briefly the basis of his or her familiarity with the matters discussed in the application.

(5)(i) A declaration in the following form:

Under penalty of perjury, I declare that I am familiar with the matters discussed in this application and, to the best of my knowledge and belief, the representations made in this application are true and correct.

(ii) This declaration must be dated and signed by:

(A) The applicant, in its individual capacity, in the case of an individual party in interest seeking exemptive relief on his or her own behalf;

(B) A corporate officer or partner where the applicant is a corporation or partnership;

(C) A designated officer or official where the applicant is an association, organization or other unincorporated enterprise;

(D) The plan fiduciary that has the authority, responsibility, and control with respect to the exemption transaction where the applicant is a plan.

(c) Specialized statements, as applicable, from a qualified independent appraiser on behalf of the plan, such as appraisal reports or analyses of market conditions, submitted to support an application for exemption must be accompanied by a statement of consent from such appraiser acknowledging that the statement is being submitted to the Department as part of an application for exemption. Such statements must also contain the following written information:

(1) A copy of the qualified independent appraiser's engagement letter with the plan describing the specific duties the appraiser shall undertake;

(2) A summary of the qualified independent appraiser's qualifications to serve in such capacity;

(3) A detailed description of any relationship that the qualified independent appraiser has had or may have with any party in interest engaging in the transaction with the plan, or its affiliates, that may influence the appraiser;

(4) A written appraisal report prepared by the qualified independent appraiser, on behalf of the plan, which satisfies the following requirements:

(i) The report must describe the method(s) used in determining the fair market value of the subject asset(s) and an explanation of why such method best reflects the fair market value of the asset(s);

(ii) The report must take into account any special benefit that the party in interest or its affiliate(s) may derive from control of the asset(s), such as owning an adjacent parcel of real property or gaining voting control over a company; and

(iii) The report must be current and not more than one year old from the date of the transaction, and there must be a written update by the qualified independent appraiser affirming the accuracy of the appraisal as of the date of the transaction. If the appraisal report is a year old or more, a new appraisal shall be submitted to the Department by the applicant.

(5) If the subject of the appraisal report is real property, the qualified independent appraiser shall submit a written representation that he or she is a member of a professional organization of appraisers that can sanction its members for acts of malfeasance;

(6) If the subject of the appraisal report is an asset other than real property, the qualified independent appraiser shall submit a written representation describing the appraiser's prior experience in valuing assets of the same type; and

(7) The qualified independent appraiser shall submit a written representation disclosing the percentage of its current income that was derived from any party in interest involved in the transaction or its affiliates; in general, such percentage shall be computed by comparing, in fractional form:

(i) The amount of the appraiser's projected personal or business income from the current federal income tax year (including amounts received from preparing the appraisal report) that will be derived from the party in interest or its affiliates (expressed as a numerator); and

(ii) The appraiser's gross personal or business income for the prior federal income tax year (expressed as a denominator).

(d) For those exemption transactions requiring the retention of a qualified independent fiduciary to represent the interests of the plan, a statement must be submitted by such fiduciary that contains the following written information:

(1) A signed and dated declaration under penalty of perjury that, to the best of the qualified independent fiduciary's knowledge and belief, all of the representations made in such statement are true and correct;

(2) A copy of the qualified independent fiduciary's engagement letter with the plan describing the fiduciary's specific duties;

(3) An explanation for the conclusion that the fiduciary is a qualified independent fiduciary, which also must include a summary of that person's qualifications to serve in such capacity, as well as a description of any prior experience by that person in acting as a qualified independent fiduciary with respect to a plan;

(4) A detailed description of any relationship that the qualified independent fiduciary has had or may have with the party in interest engaging in the transaction with the plan or its affiliates;

(5) An acknowledgement by the qualified independent fiduciary that it

understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the plan;

(6) The qualified independent fiduciary's opinion on whether the proposed transaction would be in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plan, along with a statement of the reasons on which the opinion is based;

(7) Where the proposed transaction is continuing in nature, a declaration by the qualified independent fiduciary that it is authorized to take all appropriate actions to safeguard the interests of the plan, and shall, during the pendency of the transaction:

(i) Monitor the transaction on behalf of the plan on a continuing basis;

(ii) Ensure that the transaction remains in the interests of the plan and, if not, take any appropriate actions available under the particular circumstances; and

(iii) Enforce compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and

(8) The qualified independent fiduciary shall submit a written representation disclosing the percentage of such fiduciary's current income that was derived from any party in interest involved in the transaction or its affiliates; in general, such percentage shall be computed by comparing, in fractional form:

(i) The amount of the fiduciary's projected personal or business income from the current federal income tax year that will be derived from the party in interest or its affiliates (expressed as a numerator); and

(ii) The fiduciary's gross personal or business income (excluding fixed, non-discretionary retirement income) for the prior federal income tax year (expressed as a denominator).

(e) Specialized statements, as applicable, from other third-party experts, including but not limited to economists or market specialists, submitted on behalf of the plan to support an application for exemption must be accompanied by a statement of consent from such expert acknowledging that the statement is being submitted to the Department as part of an application for exemption. Such statements must also contain the following written information:

(1) A copy of the expert's engagement letter with the plan describing the specific duties the expert will undertake;

(2) A summary of the expert's qualifications to serve in such capacity; and

(3) A detailed description of any relationship that the expert has had or may have with any party in interest engaging in the transaction with the plan, or its affiliates, that may influence the actions of the expert.

(f) An application for exemption may also include a draft of the requested exemption which describes the transaction and parties in interest for which exemptive relief is sought and the specific conditions under which the exemption would apply.

§ 2570.35 Information to be included in applications for individual exemptions only.

(a) Except as provided in paragraph (c) of this section, every application for an individual exemption must include, in addition to the information specified in § 2570.34 of this subpart, the following information:

(1) The name, address, telephone number, and type of plan or plans to which the requested exemption applies;

(2) The Employer Identification Number (EIN) and the plan number (PN) used by such plan or plans in all reporting and disclosure required by the Department;

(3) Whether any plan or trust affected by the requested exemption has ever been found by the Department, the Internal Revenue Service, or by a court to have violated the exclusive benefit rule of section 401(a) of the Code, section 4975(c)(1) of the Code, section 406 or 407(a) of ERISA, or 5 U.S.C. 8477(c)(3), including a description of the circumstances surrounding such violation;

(4) Whether any relief under section 408(a) of ERISA, section 4975(c)(2) of the Code, or 5 U.S.C. 8477(c)(3) has been requested by, or provided to, the applicant or any of the parties on behalf of whom the exemption is sought and, if so, the exemption application number or the prohibited transaction exemption number;

(5) Whether the applicant or any of the parties in interest involved in the exemption transaction is currently, or has been within the last five years, a defendant in any lawsuit or criminal action concerning such person's conduct as a fiduciary or party in interest with respect to any plan (other than a lawsuit with respect to a routine claim for benefits), and a description of the circumstances of such lawsuit or criminal action;

(6) Whether the applicant (including any person described in § 2570.34(b)(5)(ii)) or any of the parties in interest involved in the exemption transaction has, within the last 13 years, been either convicted or released from imprisonment, whichever is later, as a result of: any felony involving abuse or misuse of such person's position or employment with an employee benefit plan or a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime of which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA, and a description of the circumstances of any such conviction. For purposes of this section, a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal;

(7) Whether, within the last five years, any plan affected by the exemption transaction or any party in interest involved in the exemption transaction has been under investigation or examination by, or has been engaged in litigation or a continuing controversy with, the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, or the Federal Retirement Thrift Investment Board involving compliance with provisions of ERISA, provisions of the Code relating to employee benefit plans, or provisions of FERSA relating to the Federal Thrift Savings Fund. If so, the applicant must provide a brief statement describing the investigation, examination, litigation or controversy. The Department reserves the right to require the production of additional information or documentation concerning any of the above matters. In this regard, a denial of the exemption application will result from a failure to provide additional information requested by the Department.

(8) Whether any plan affected by the requested exemption has experienced a reportable event under section 4043 of ERISA, and, if so, a description of the circumstances of any such reportable event;

(9) Whether a notice of intent to terminate has been filed under section 4041 of ERISA respecting any plan affected by the requested exemption, and, if so, a description of the circumstances for the issuance of such notice;

(10) Names, addresses, and taxpayer identifying numbers of all parties in interest involved in the subject transaction;

(11) The estimated number of participants and beneficiaries in each plan affected by the requested exemption as of the date of the application;

(12) The percentage of the fair market value of the total assets of each affected plan that is involved in the exemption transaction;

(13) Whether the exemption transaction has been consummated or will be consummated only if the exemption is granted;

(14) If the exemption transaction has already been consummated:

(i) The circumstances which resulted in plan fiduciaries causing the plan(s) to engage in the transaction before obtaining an exemption from the Department;

(ii) Whether the transaction has been terminated;

(iii) Whether the transaction has been corrected as defined in Code section 4975(f)(5);

(iv) Whether Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, has been filed with the Internal Revenue Service with respect to the transaction; and

(v) Whether any excise taxes due under section 4975(a) and (b) of the Code, or any civil penalties due under section 502(i) or (l) of ERISA by reason of the transaction have been paid. If so, the applicant should submit documentation (*e.g.,* a canceled check) demonstrating that the excise taxes or civil penalties were paid.

(15) The name of every person who has investment discretion over any plan assets involved in the exemption transaction and the relationship of each such person to the parties in interest involved in the exemption transaction and the affiliates of such parties in interest;

(16) Whether or not the assets of the affected plan(s) have been invested, directly or indirectly, in any other exempt or non-exempt transactions with the party in interest involved in the exemption transaction (including, but not limited to, plan investments in loans or leases involving the party in interest, securities lending with the party in interest, extensions of credit with the party in interest, or plan investment in securities issued by the party in interest), and, if such investments exist, a statement which indicates:

(i) The type of investment to which the statement pertains;

(ii) The aggregate fair market value of all investments of this type as reflected in the plan's most recent annual report;

(iii) The approximate percentage of the fair market value of the plan's total assets as shown in such annual report that is represented by all investments of this type; and

(iv) The statutory or administrative exemption covering these investments, if any;

(17) The approximate aggregate fair market value of the total assets of each affected plan;

(18) The person(s) who will bear the costs of the exemption application and of notifying interested persons; and

(19) Whether an independent fiduciary is or will be involved in the exemption transaction and, if so, the names of the persons who will bear the cost of the fee payable to such fiduciary.

(b) Each application for an individual exemption must also include:

(1) True copies of all contracts, deeds, agreements, and instruments, as well as relevant portions of plan documents, trust agreements, and any other documents bearing on the exemption transaction;

(2) A discussion of the facts relevant to the exemption transaction that are reflected in these documents and an analysis of their bearing on the requested exemption;

(3) A copy of the most recent financial statements of each plan affected by the requested exemption; and

(4) A net worth statement with respect to any party in interest that is providing a personal guarantee with respect to the exemption transaction.

(c) Special rule for applications for individual exemption involving pooled funds:

(1) The information required by paragraphs (a)(8) through (12) of this section is not required to be furnished in an application for individual exemption involving one or more pooled funds;

(2) The information required by paragraphs (a)(1) through (7) and (a)(13) through (19) of this section and by paragraphs (b)(1) through (3) of this section must be furnished in reference to the pooled fund, rather than to the plans participating therein. (For purposes of this paragraph, the information required by paragraph (a)(16) of this section relates solely to other investment transactions between the pooled fund or funds and any parties in interest involved in the exemption transaction.);

(3) The following information must also be furnished—

(i) The estimated number of plans that are participating (or will participate) in the pooled fund; and

(ii) The minimum and maximum limits imposed by the pooled fund (if any) on the portion of the total assets of each plan that may be invested in the pooled fund.

(4) Additional requirements for applications for individual exemption involving pooled funds in which certain plans participate.

(i) This paragraph applies to any application for an individual exemption involving one or more pooled funds in which any plan participating therein—

(A) Invests an amount which exceeds 20% of the total assets of the pooled fund, or

(B) Covers employees of:

(*1*) The party sponsoring or maintaining the pooled fund, or any affiliate of such party, or

(*2*) Any fiduciary with investment discretion over the pooled fund's assets, or any affiliate of such fiduciary.

(ii) The exemption application must include, with respect to each plan described in paragraph (c)(4)(i) of this section, the information required by paragraphs (a)(1) through (3), (a)(5) through (7), (a)(10), (a)(12) through (16), and (a)(18) and (19), of this section. The information required by this paragraph must be furnished in reference to the plan's investment in the pooled fund (e.g., the names, addresses and taxpayer identifying numbers of all fiduciaries responsible for the plan's investment in the pooled fund [§ 2570.35(a) (10)], the percentage of the assets of the plan invested in the pooled fund [§ 2570.35(a)(12)], whether the plan's investment in the pooled fund has been consummated or will be consummated only if the exemption is granted [§ 2570.35(a)(13)], etc.).

(iii) The information required by paragraph (c)(4) of this section is in addition to the information required by paragraphs (c)(2) and (3) of this section relating to information furnished by reference to the pooled fund.

(5) The special rule and the additional requirements described in paragraphs (c)(1) through (4) of this section do not apply to an individual exemption request solely for the investment by a plan in a pooled fund. Such an application must provide the information required by paragraphs (a) and (b) of this section.

(d) Retroactive exemptions:

(1) Generally, the Department will favorably consider requests for retroactive relief, in all exemption applications, where the safeguards necessary for the grant of a prospective exemption were in place at the time at

which the parties entered into the transaction. An applicant for a retroactive exemption must demonstrate that it acted in good faith by taking reasonable and appropriate steps to protect the plan from abuse and unnecessary risk at the time of the transaction.

(2) Among the factors that the Department would take into account in making a finding that an applicant acted in good faith include the following:

(i) The participation of an independent fiduciary acting on behalf of the plan who is qualified to negotiate, approve and monitor the transaction;

(ii) The existence of a contemporaneous appraisal by a qualified independent appraiser or reference to an objective third party source, such as a stock or bond index;

(iii) The existence of a bidding process or evidence of comparable fair market transactions with unrelated third parties;

(iv) That the applicant has submitted an accurate and complete application for exemption containing documentation of all necessary and relevant facts and representations upon which the applicant relied. In this regard, additional weight will be given to facts and representations which are prepared and certified by a source independent of the applicant;

(v) That the applicant has submitted evidence that the plan fiduciary did not engage in an act or transaction knowing that such act or transaction was prohibited under section 406 of ERISA and/or section 4975 of the Code. In this regard, the Department will accord appropriate weight to the submission of a contemporaneous, reasoned legal opinion of counsel, upon which the plan fiduciary relied in good faith before entering the act or transaction;

(vi) That the applicant has submitted a statement of the circumstances which prompted the submission of the application for exemption and the steps taken by the applicant with regard to the transaction upon discovery of the violation;

(vii) That the applicant has submitted a statement prepared and certified by an independent person familiar with the types of transactions for which relief is requested demonstrating that the terms and conditions of the transaction (including, in the case of an investment, the return in fact realized by the plan) were at least as favorable as that obtainable in a similar transaction with an unrelated party; and

(viii) Such other undertakings and assurances with respect to the plan and its participants that may be offered by the applicant which are relevant to the criteria under section 408(a) of ERISA and section 4975(c)(2) of the Code.

(3) The Department, as a general matter, will not favorably consider requests for retroactive exemptions where transactions or conduct with respect to which an exemption is requested resulted in a loss to the plan. In addition, the Department will not favorably consider requests for exemptions where the transactions are inconsistent with the general fiduciary responsibility provisions of sections 403 or 404 of ERISA or the exclusive benefit requirements of section 401(a) of the Code.

§ 2570.36 Where to file an application.

The Department's prohibited transaction exemption program is administered by the Employee Benefits Security Administration (EBSA). Any exemption application governed by these procedures may be mailed via first-class mail to: Employee Benefits Security Administration, Office of Exemption Determinations, U.S. Department of Labor, Room N–5700, 200 Constitution Avenue, NW., Washington, DC 20210. Alternatively, applications may be e-mailed to the Department at: *e-OED@dol.gov* or transmitted via facsimile.[2] Notwithstanding the foregoing methods of transmission, applicants are also required to submit two paper copies of applications—one for the Department's file and one for the analyst's working copy.

§ 2570.37 Duty to amend and supplement exemption applications.

(a) While an exemption application is pending final action with the Department, an applicant must promptly notify the Department in writing if he or she discovers that any material fact or representation contained in the application or in any documents or testimony provided in support of the application is inaccurate, if any such fact or representation changes during this period, or if, during the pendency of the application, anything occurs that may affect the continuing accuracy of any such fact or representation. In addition, an applicant must promptly notify the Department in writing if it learns that a material fact or representation has been omitted from the exemption application.

(b) If, at any time during the pendency of an exemption application, the applicant or any other party in interest who would participate in the exemption transaction becomes the subject of an investigation or enforcement action by the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, or the Federal Retirement Thrift Investment Board involving compliance with provisions of ERISA, provisions of the Code relating to employee benefit plans, or provisions of FERSA relating to the Federal Thrift Savings Fund, the applicant must promptly notify the Department.

(c) The Department may require an applicant to provide documentation it considers necessary to verify any statements contained in the application or in supporting materials or documents.

(d) The determination as to whether, under the totality of the facts and circumstances, a particular statement contained in (or omitted from) an exemption application constitutes a material fact or representation shall be made by the Department. To the extent that a material representation is omitted, becomes inaccurate, or changes, the prohibited transaction exemptive relief will no longer be available starting on the earliest date of these events.

§ 2570.38 Tentative denial letters.

(a) If, after reviewing an exemption file, the Department tentatively concludes that it will not propose or grant the exemption, it will notify the applicant in writing. At the same time, the Department will provide a brief statement of the reasons for its tentative denial.

(b) An applicant will have 20 days from the date of a tentative denial letter to request a conference under § 2570.40 of this subpart and/or to notify the Department of its intent to submit additional information under § 2570.39 of this subpart. If the Department does not receive a request for a conference or a notification of intent to submit additional information within that time, it will issue a final denial letter pursuant to § 2570.41.

(c) The Department need not issue a tentative denial letter to an applicant before issuing a final denial letter where the Department has conducted a hearing on the exemption pursuant to either § 2570.46 or § 2570.47.

§ 2570.39 Opportunities to submit additional information.

(a) An applicant may notify the Department of its intent to submit additional information supporting an exemption application either by telephone or by letter sent to the address furnished in the applicant's tentative denial letter, or electronically via the e-mail address provided in the tentative

[2] The current facsimile number for the Office of Exemption Determinations is (202) 219–0204.

denial letter. At the same time, the applicant should indicate generally the type of information that will be submitted.

(b) An applicant will have 40 days from the date of the tentative denial letter described in § 2570.38(a) to submit in writing all of the additional information he or she intends to provide in support of the application. All such information must be accompanied by a declaration under penalty of perjury attesting to the truth and correctness of the information provided, which is dated and signed by a person qualified under § 2570.34(b)(5) of this subpart to sign such a declaration.

(c) If, for reasons beyond its control, an applicant is unable to submit all the additional information he or she intends to provide in support of his application within the 40-day period described in paragraph (b) of this section, he or she may request an extension of time to furnish the information. Such requests must be made before the expiration of the 40-day period and will be granted only in unusual circumstances and for a limited period of time as determined, respectively, by the Department in its sole discretion.

(d) If an applicant is unable to submit all of the additional information he or she intends to provide in support of his exemption application within the 40-day period specified in paragraph (b) of this section, or within any additional period of time granted pursuant to paragraph (c) of this section, the applicant may withdraw the exemption application before expiration of the applicable time period and reinstate it later pursuant to § 2570.44.

(e) The Department will issue, without further notice, a final denial letter denying the requested exemption pursuant to § 2570.41 where—

(1) The Department has not received all the additional information that the applicant was required to submit within the 40-day period described in paragraph (b) of this section, or within any additional period of time granted pursuant to paragraph (c) of this section;

(2) The applicant did not request a conference pursuant to § 2570.38(b) of this subpart; and

(3) The applicant has not withdrawn the application as permitted by paragraph (d) of this section.

§ 2570.40 Conferences.

(a) Any conference between the Department and an applicant pertaining to a requested exemption will be held in Washington, DC, except that a telephone conference will be held at the applicant's request.

(b) An applicant is entitled to only one conference with respect to any exemption application. An applicant will not be entitled to a conference, however, where the Department has held a hearing on the exemption under either § 2570.46 or § 2570.47 of this subpart.

(c) Insofar as possible, conferences will be scheduled as joint conferences with all applicants present where:

(1) More than one applicant has requested an exemption with respect to the same or similar types of transactions;

(2) The Department is considering the applications together as a request for a class exemption;

(3) The Department contemplates not granting the exemption; and

(4) More than one applicant has requested a conference.

(d) In instances where the applicant has requested a conference pursuant to § 2570.38(b) and also has submitted additional information pursuant to § 2570.39, the Department will schedule a conference under this section for a date and time that occurs within 20 days after the date on which the Department has provided either oral or written notification to the applicant that, after reviewing the additional information provided by the applicant pursuant to § 2570.39, it is still not prepared to propose the requested exemption. If, for reasons beyond its control, the applicant cannot attend a conference within the 20-day limit described in this paragraph, the applicant may request an extension of time for the scheduling of a conference, provided that such request is made before the expiration of the 20-day limit. The Department will only grant such an extension in unusual circumstances and for a brief period of time as determined, respectively, by the Department in its sole discretion.

(e) In instances where the applicant has requested a conference pursuant to § 2570.38(b) of this subpart but has not submitted additional information pursuant to § 2570.39, the Department will schedule a conference under this section for a date and time that occurs within 40 days after the date of the issuance of the tentative denial letter described in § 2570.38(a). If, for reasons beyond its control, the applicant cannot attend a conference within the 40-day limit described in this paragraph, the applicant may request an extension of time for the scheduling of a conference, provided that such request is made before the expiration of the 40-day limit. The Department will only grant such an extension in unusual circumstances and for a brief period of time as determined, respectively, by the Department in its sole discretion.

(f) If the applicant fails to either timely schedule or appear for a conference agreed to by the Department pursuant to paragraphs (d) or (e) of this section, the applicant will be deemed to have waived its right to a conference.

(g) Within 20 days after the date of any conference held under this section, the applicant may submit to the Department (electronically or in paper form) any additional data, arguments, or precedents discussed at the conference but not previously or adequately presented in writing. If, for reasons beyond its control, the applicant is unable to submit the additional information within this 20-day limit, the applicant may request an extension of time to furnish the information, provided that such request is made before the expiration of the 20-day limit described in this paragraph. The Department will only grant such an extension in unusual circumstances and for a brief period of time as determined, respectively, by the Department in its sole discretion.

§ 2570.41 Final denial letters.

The Department will issue a final denial letter denying a requested exemption where:

(a) The conditions for issuing a final denial letter specified in § 2570.38(b) or § 2570.39(e) of this subpart are satisfied;

(b) After issuing a tentative denial letter under § 2570.38 of this subpart and considering the entire record in the case, including all written information submitted pursuant to § 2570.39 and § 2570.40(e) of this subpart, the Department decides not to propose an exemption or to withdraw an exemption already proposed; or

(c) After proposing an exemption and conducting a hearing on the exemption under either § 2570.46 or § 2570.47 of this subpart and after considering the entire record in the case, including the record of the hearing, the Department decides to withdraw the proposed exemption.

§ 2570.42 Notice of proposed exemption.

If the Department tentatively decides that an administrative exemption is warranted, it will publish a notice of a proposed exemption in the **Federal Register**. In addition to providing notice of the pendency of the exemption before the Department, the notice will:

(a) Explain the exemption transaction and summarize the information and reasons in support of proposing the exemption;

(b) Describe the scope of relief and any conditions of the proposed exemption;

(c) Inform interested persons of their right to submit comments to the Department (either electronically or in writing) relating to the proposed exemption and establish a deadline for receipt of such comments; and

(d) Where the proposed exemption includes relief from the prohibitions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA, inform interested persons of their right to request a hearing under § 2570.46 of this subpart and establish a deadline for receipt of requests for such hearings.

§ 2570.43 Notification of interested persons by applicant.

(a) If a notice of proposed exemption is published in the **Federal Register** in accordance with § 2570.42 of this subpart, the applicant must notify interested persons of the pendency of the exemption in the manner and time period specified in the application. If the Department determines that this notification would be inadequate, the applicant must obtain the Department's consent as to the manner and time period of providing the notice to interested persons. Any such notification must include:

(1) A copy of the notice of proposed exemption as published in the **Federal Register**; and

(2) A supplemental statement in the following form:

You are hereby notified that the United States Department of Labor is considering granting an exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, or the Federal Employees' Retirement System Act of 1986. The exemption under consideration is summarized in the enclosed [Summary of Proposed Exemption, and described in greater detail in the accompanying] [3] Notice of Proposed Exemption. As a person who may be affected by this exemption, you have the right to comment on the proposed exemption by [date].[4] [If you may be adversely affected by the grant of the exemption, you also have the right to request a hearing on the exemption by [date].] [5]

All comments and/or requests for a hearing should be addressed to the Office of Exemption Determinations, Employee Benefits Security Administration, Room _____, [6] U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* Application No. _____. [7] Comments and hearing requests may also be transmitted to the Department electronically at *e-oed@dol.gov* or at *http://www.regulations.gov* (follow instructions for submission), and should prominently reference the application number listed above. In addition, comments and hearing requests may be transmitted to the Department via facsimile at _____.[8] Individuals submitting comments or requests for a hearing on this matter are advised not to disclose sensitive personal data, such as social security numbers.

The Department will make no final decision on the proposed exemption until it reviews all comments received in response to the enclosed notice. If the Department decides to hold a hearing on the exemption request before making its final decision, you will be notified of the time and place of the hearing.

(b) The method used by an applicant to furnish notice to interested persons must be reasonably calculated to ensure that interested persons actually receive the notice. In all cases, personal delivery and delivery by first-class mail will be considered reasonable methods of furnishing notice. If the applicant elects to furnish notice electronically, he or she must provide satisfactory proof of electronic delivery to the entire class of interested persons.

(c) After furnishing the notification described in paragraph (a) of this section, an applicant must provide the Department with a written statement confirming that notice was furnished in accordance with the foregoing requirements of this section. This statement must be accompanied by a declaration under penalty of perjury attesting to the truth of the information provided in the statement and signed by a person qualified under § 2570.34(b)(5) of this subpart to sign such a declaration. No exemption will be granted until such a statement and its accompanying declaration have been furnished to the Department.

(d) In addition to the provision of notification required by paragraph (a) of this section, the Department, in its discretion, may also require an applicant to furnish interested persons with a brief summary of the proposed exemption (Summary of Proposed Exemption), written in a manner calculated to be understood by the average recipient, which objectively describes:

(1) The exemption transaction and the parties in interest thereto;

(2) Why such transaction would violate the prohibited transaction provisions of ERISA, the Code, and/or FERSA from which relief is sought;

(3) The reasons why the plan seeks to engage in the transaction; and

(4) The conditions and safeguards proposed to protect the plan and its participants and beneficiaries from potential abuse or unnecessary risk of loss in the event the Department grants the exemption.

(e) Applicants who are required to provide interested persons with the Summary of Proposed Exemption described in paragraph (d) of this section shall furnish the Department with a copy of such summary for review and approval prior to its distribution to interested persons. Such applicants shall also provide confirmation to the Department that the Summary of Proposed Exemption was furnished to interested persons as part of the written statement and declaration required of exemption applicants by paragraph (c) of this section.

§ 2570.44 Withdrawal of exemption applications.

(a) An applicant may withdraw an application for an exemption at any time by oral or written (including electronic) notice to the Department. A withdrawn application generally shall not prejudice any subsequent applications for an exemption submitted by an applicant.

(b) Upon receiving an applicant's notice of withdrawal regarding an application for an individual exemption, the Department will confirm by letter the applicant's withdrawal of the application and will terminate all proceedings relating to the application. If a notice of proposed exemption has been published in the **Federal Register**, the Department will publish a notice withdrawing the proposed exemption.

(c) Upon receiving an applicant's notice of withdrawal regarding an application for a class exemption or for an individual exemption that is being considered with other applications as a request for a class exemption, the Department will inform any other applicants for the exemption of the withdrawal. The Department will continue to process other applications for the same exemption. If all applicants for a particular class exemption

[3] To be added in instances where the Department requires the applicant to furnish a Summary of Proposed Exemption to interested persons as described in § 2570.43(d).

[4] The applicant will write in this space the date of the last day of the time period specified in the notice of proposed exemption.

[5] To be added in the case of an exemption that provides relief from section 406(b) of ERISA or corresponding sections of the Code or FERSA.

[6] Apart from the satisfaction of this statutory prerequisite, the legislative history of ERISA makes it clear that the Department retains broad discretion in determining whether the grant of an exemption is appropriate in a particular instance. H.R. Rep. No. 1280, 93d Cong., 2d Sess. 311 (1974).

[7] The applicant will fill in the exemption application number, which is stated in the notice of proposed exemption, as well as in all correspondence from the Department to the applicant regarding the application.

[8] The current facsimile number for the Office of Exemption Determinations is (202) 219–0204.

withdraw their applications, the Department may either terminate all proceedings relating to the exemption or propose the exemption on its own motion.

(d) If, following the withdrawal of an exemption application, an applicant decides to reapply for the same exemption, he or she may contact the Department in writing (including electronically) to request that the application be reinstated. The applicant should refer to the application number assigned to the original application. If, at the time the original application was withdrawn, any additional information to be submitted to the Department under § 2570.39 was outstanding, that information must accompany the request for reinstatement of the application. However, the applicant need not resubmit information previously furnished to the Department in connection with a withdrawn application unless reinstatement of the application is requested more than two years after the date of its withdrawal.

(e) Any request for reinstatement of a withdrawn application submitted, in accordance with paragraph (d) of this section, will be granted by the Department, and the Department will take whatever steps remained at the time the application was withdrawn to process the application.

§ 2570.45 Requests for reconsideration.

(a) The Department will entertain one request for reconsideration of an exemption application that has been finally denied pursuant to § 2570.41 if the applicant presents in support of the application significant new facts or arguments, which, for good reason, could not have been submitted for the Department's consideration during its initial review of the exemption application.

(b) A request for reconsideration of a previously denied application must be made within 180 days after the issuance of the final denial letter and must be accompanied by a copy of the Department's final letter denying the exemption and a statement setting forth the new information and/or arguments that provide the basis for reconsideration.

(c) A request for reconsideration must also be accompanied by a declaration under penalty of perjury attesting to the truth of the new information provided, which is signed by a person qualified under § 2570.34(b)(5) to sign such a declaration.

(d) If, after reviewing a request for reconsideration, the Department decides that the facts and arguments presented do not warrant reversal of its original decision to deny the exemption, it will send a letter to the applicant reaffirming that decision.

(e) If, after reviewing a request for reconsideration, the Department decides, based on the new facts and arguments submitted, to reconsider its final denial letter, it will notify the applicant of its intent to reconsider the application in light of the new information presented. The Department will then take whatever steps remained at the time it issued its final denial letter to process the exemption application.

(f) If, at any point during its subsequent processing of the application, the Department decides again that the exemption is unwarranted, it will issue a letter affirming its final denial.

§ 2570.46 Hearings in opposition to exemptions from restrictions on fiduciary self-dealing.

(a) Any interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption. Any such request must state:

(1) The name, address, telephone number, and e-mail address of the person making the request;

(2) The nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and

(3) A statement of the issues to be addressed and a general description of the evidence to be presented at the hearing.

(b) The Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where:

(1) The request for the hearing does not meet the requirements of paragraph (a) of this section;

(2) The only issues identified for exploration at the hearing are matters of law; or

(3) The factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

(c) An applicant for an exemption must notify interested persons in the event that the Department schedules a hearing on the exemption. Such notification must be given in the form, time, and manner prescribed by the Department. Ordinarily, however, adequate notification can be given by providing to interested persons a copy of the notice of hearing published by the Department in the **Federal Register** within 10 days of its publication, using any of the methods approved in § 2570.43(b).

(d) After furnishing the notice required by paragraph (c) of this section, an applicant must submit a statement confirming that notice was given in the form, manner, and time prescribed. This statement must be accompanied by a declaration under penalty of perjury attesting to the truth of the information provided in the statement, which is signed by a person qualified under § 2570.34(b)(5) to sign such a declaration.

§ 2570.47 Other hearings.

(a) In its discretion, the Department may schedule a hearing on its own motion where it determines that issues relevant to the exemption can be most fully or expeditiously explored at a hearing. A notice of such hearing shall be published by the Department in the **Federal Register**.

(b) An applicant for an exemption must notify interested persons of any hearing on an exemption scheduled by the Department in the manner described in § 2570.46(c). In addition, the applicant must submit a statement subscribed as true under penalty of perjury like that required in § 2570.46(d).

§ 2570.48 Decision to grant exemptions.

(a) The Department may not grant an exemption under section 408(a) of ERISA, section 4975(c)(2) of the Code, or 5 U.S.C. 8477(c)(3) unless, following evaluation of the facts and representations comprising the administrative record of the proposed exemption (including any comments received in response to a notice of proposed exemption and the record of any hearing held in connection with the proposed exemption), it finds that the exemption is:

(1) Administratively feasible;

(2) In the interests of the plan (or the Thrift Savings Fund in the case of FERSA) and of its participants and beneficiaries; and

(3) Protective of the rights of participants and beneficiaries of such plan (or the Thrift Savings Fund in the case of FERSA).

(b) In each instance where the Department determines to grant an exemption, it shall publish a notice in

the **Federal Register** which summarizes the transaction or transactions for which exemptive relief has been granted and specifies the conditions under which such exemptive relief is available.

§ 2570.49 Limits on the effect of exemptions.

(a) An exemption does not take effect or protect parties in interest from liability with respect to the exemption transaction unless the material facts and representations contained in the application and in any materials and documents submitted in support of the application were true and complete.

(b) An exemption is effective only for the period of time specified and only under the conditions set forth in the exemption.

(c) Only the specific parties to whom an exemption grants relief may rely on the exemption. If the notice granting an exemption does not limit exemptive relief to specific parties, all parties to the exemption transaction may rely on the exemption.

(d) For transactions that are continuing in nature, an exemption does not protect parties in interest from liability with respect to an exemption transaction if, during the continuation of the transaction, there are material changes to the original facts and representations underlying such exemption or if one or more of the exemption's conditions cease to be met.

§ 2570.50 Revocation or modification of exemptions.

(a) If, after an exemption takes effect, changes in circumstances, including changes in law or policy, occur which call into question the continuing validity of the Department's original findings concerning the exemption, the Department may take steps to revoke or modify the exemption.

(b) Before revoking or modifying an exemption, the Department will publish a notice of its proposed action in the **Federal Register** and provide interested persons with an opportunity to comment on the proposed revocation or modification. Prior to the publication of such notice, the applicant will be notified of the Department's proposed action and the reasons therefore. Subsequent to the publication of the notice, the applicant will have the opportunity to comment on the proposed revocation or modification.

(c) Ordinarily the revocation or modification of an exemption will have prospective effect only.

§ 2570.51 Public inspection and copies.

(a) The administrative record of each exemption will be open to public inspection and copying at the EBSA Public Disclosure Room, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) Upon request, the staff of the Public Disclosure Room will furnish photocopies of an administrative record, or any specified portion of that record, for a specified charge per page.

§ 2570.52 Effective date.

This subpart is effective with respect to all exemptions filed with or initiated by the Department under section 408(a) of ERISA, section 4975(c)(2) of the Code, and/or 5 U.S.C. 8477(c)(3) at any time after [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]. Applications for exemptions under section 408(a) of ERISA, section 4975(c)(2) of the Code, and/or 5 U.S.C. 8477(c)(3) filed on or after September 10, 1990 but before [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] are governed by part 2570 of chapter XXV of title 29 of the Code of Federal Regulations (title 29 CFR part 2570 as revised July 1, 1991).

* * * * *

Signed at Washington, DC, this 18th day of August 2010.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

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