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RESERVATIONS: (202) 741–6008

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**RIN 0563–AB96**

### Common Crop Insurance Regulations, Macadamia Nut Crop Insurance Provisions; Correction

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Correcting amendment; correction.

**SUMMARY:** This document contains corrections to the correcting amendment which was published September 27, 2010 (75 FR 59057). The regulation, as here pertinent, related to the insurance of macadamia nuts.

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926– 7730.

**SUPPLEMENTARY INFORMATION:**

#### Background

The correcting amendment that is the subject of this correction revised the Macadamia Nut Crop Insurance Provisions to specify the correct crop year to which it was applicable. It was published September 27, 2010 (75 FR 59057).

#### Need for Correction

As published, the Background of the correcting amendment contained an error which may prove to be misleading and which needs to be clarified. The sentence in the background stated ''The 2011 contract change date for the Macadamia Nut Crop Insurance Provisions is August 31, 2010, which is prior to April 30, 2011.'' This sentence should have stated ''The 2011 contract change date for the Macadamia Nut Crop Insurance Provisions is August 31, 2009, which is prior to April 30, 2010.''

#### Correction of Publication

In FR Doc. 2010–23884, on page 59057 in the issue of September 27, 2010, make the following correction, in the **SUPPLEMENTARY INFORMATION** section. On page 59057 in the second column, correct the third sentence of the second paragraph in the Background section under ''Need for Correction'' to read: ''The 2011 contract change date for the Macadamia Nut Crop Insurance Provisions is August 31, 2009, which is prior to April 30, 2010.''

Signed in Washington, DC, on January 14, 2011.

**William J. Murphy,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2011–1423 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 920

**[Doc. No. AO–FV–08–0174; AMS–FV–08–0085; FV08–920–3 C]**

### Kiwifruit Grown in California; Order Amending Marketing Order No. 920; Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final rule that was published in the **Federal Register** on Tuesday, June 29, 2010 (75 FR 37288). The final rule amended Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California. The amendments redefined the grower districts into which the production area is divided and reallocated committee membership among the districts. This rule corrects the final rule by removing order language regarding selection of members and alternates that was inadvertently kept in after the removal of the language as a conforming change was approved by growers in a referendum.

**DATES:** Effective January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Laurel May or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, *E-mail: Laurel.May@ams.usda.gov* or *Kathy.Finn@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This document provides a correcting amendment to Marketing Order 920 (7 CFR part 920). Specifically, this rule removes language from § 920.21—''Term of Office'' that refers to the selection of three committee members and alternates to represent the districts with the highest shipping volumes.

The Kiwifruit Administrative Committee (committee) is comprised of eleven grower members and eleven alternates, as well as one public member and alternate. Prior to the recent order amendment, the regulated production area was divided into eight grower districts. One grower member and one alternate were selected to represent each of the eight districts on the committee. Three members and alternates were selected to provide additional representation for the three districts with the highest shipping volume.

A final rule was published on June 29, 2010 (75 FR 37288) that amended section 920.12 of the order to provide for only three grower districts, with all eleven grower member and alternate seats allocated among the districts based on production history. A conforming change was necessary in section 920.21, to delete references to additional members and alternates for the districts with the highest shipping volume as this was no longer relevant under the modified district makeup. Although this conforming change was approved, along with the district changes to section 920.12, AMS inadvertently kept the language in 920.21 that was no longer relevant. This correcting amendment removes that language.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Revise § 920.21 to read as follows:

**§ 920.21 Term of office.**

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1426 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 927

**[Doc. No. AMS–FV–10–0072; FV10–927–1 IR]**

## Pears Grown in Oregon and Washington; Amendment To Allow Additional Exemptions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule adds an exemption to the marketing order for Oregon-Washington pears that provides for the sale of fresh pears directly to consumers without regard to regulation. The marketing order regulates the handling of pears grown in Oregon and Washington. Local administration of the marketing order for the fresh pear industry is provided by the Fresh Pear Committee (Committee). For each customer, this rule exempts consumer-direct sales of up to 220 pounds of fresh pears per transaction, for home use only, made directly at orchards, packing facilities, roadside stands, or farmers' markets without regard to the marketing order's assessment, reporting, handling, and inspection requirements. This action is intended to provide regulatory flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

**DATES:** Effective January 26, 2011; comments received by March 28, 2011 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Portland, Oregon; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

For each customer, this rule exempts consumer-direct sales of up to 220 pounds of fresh pears per transaction, for home use only and made directly at orchards, packing facilities, roadside stands, or farmers' markets without regard to the marketing order's assessment, reporting, handling, and inspection requirements. This action is intended to provide regulatory flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

Section 927.65(a) provides the authority to exempt from regulation pears for consumption by charitable institutions and distribution by relief agencies. Section 927.65(b) provides the authority whereby certain quantities of pears or types of pear shipments may be exempted from any or all provisions of the order.

On April 22, 2010, the Committee unanimously recommended adding an exemption to the order for the sale of small quantities of home-use only pears directly to consumers. Other exemptions under the order include § 927.120 which provides for the regulation free distribution of pears for charitable or by-product use, and § 927.121, which provides an exemption for mail order sales of gift packages that are shipped directly to consumers. In order to facilitate the direct sale of local, fresh pears to consumers while relaxing the regulatory burden on small handlers, the Committee believes that specified quantities of pears sold at orchards, packing facilities, roadside stands, and farmers' markets should also be exempt from regulation.

Some grower handlers have traditionally sold a portion of their pear harvest directly to consumers from their

orchards, or from roadside fruit stands and farmers markets. Under the order, such sales are considered ''handling'' and thus fall under the various regulations of the order including the assessment, reporting, handling, and inspection requirements. When growers sell produce directly to consumers, they become handlers and are frequently referred to as ''grower handlers.'' A few packing houses, those that are generally involved only in the handling aspect of the fresh pear industry, may also sell small quantities of pears directly to consumers. The Committee recommended that sales be limited to a maximum of 220 pounds of pears per customer per sale. This weight limitation is equivalent to five standard pear boxes weighing 44 pounds each and was chosen based on industry recommendations.

By removing the requirement that these small consumer-direct sales be monitored, assessed, and regulated through the implementation of reporting requirements, quality regulations, and mandatory inspection, the Committee believes that this rule will facilitate the sale of pears within the local market, and reduce overall compliance expenses.

The Committee emphasized that the volume represented by such pear sales is insignificant and will not adversely affect the domestic and international marketing of commercial quantities of fresh pears. Furthermore, the Committee stressed that the majority of the funds assessed under the order are earmarked for large-scale promotional efforts that do not have a direct relationship or benefit to the consumer-direct sales made directly at orchards, packing sheds, roadside stands, and farmers' markets. By recommending and implementing this regulatory relaxation, the Committee also believes that it is taking an important step in helping the small businesses within the Northwest pear industry to remain viable while also facilitating the current consumer interest in buying local, fresh produce.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,537 growers of fresh pears in the regulated production area and approximately 38 handlers subject to regulation under the order. Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the Noncitrus Fruits and Nuts 2010 Preliminary Summary issued in January 2010 by the National Agricultural Statistics Service, the average 2009 fresh pear price of $456 per ton places the farm-gate value of fresh pears grown in Oregon and Washington at $202,053,810. Based on the number of fresh pear growers in the Oregon and Washington, the average gross revenue for each can be estimated at approximately $131,460. Furthermore, based on Committee records, the Committee has estimated that 56 percent of Northwest pear handlers currently ship less than $7,000,000 worth of fresh pears on an annual basis. From this information, it is concluded that the majority of growers and handlers of Oregon and Washington pears may be classified as small entities.

This rule exempts from regulation fresh pears that are sold directly to consumers—in quantities of 220 pounds or less per customer and transaction—at orchards, packing houses, roadside stands, and farmers' markets. This change should provide small pear handlers with increased marketing flexibility while facilitating the sale of pears in local markets.

Section § 927.65(b) of the order authorizes the establishment of regulations that exempt specified quantities of pears, or types of pear shipments from the order.

This rule is expected to have a beneficial impact on the Northwest pear industry, especially on small grower handlers and handlers. The Committee's goal is that this exemption will reduce overall costs to the pear industry, relax the burden on small businesses, and facilitate the distribution of fruit at the local level. The Committee believes that this action will be especially beneficial to small independent businesses because such agricultural operations tend to utilize roadside stands and farmers' markets more than do large, vertically integrated entities. The Committee has stated that the majority of pear handlers are small businesses under the SBA definition. Although this rule was recommended by the Committee with the goal of helping small pear grower handlers and handlers, it does not prevent large businesses from realizing the same benefits.

In discussing alternatives to this recommendation, the Committee contemplated maintaining the status quo. The Committee's stated goal in recommending this exemption is to reduce the regulatory burden on small entities to help them remain viable while enhancing the vibrancy of the local produce market. The Committee quickly reached the conclusion that this course of action is the only feasible option.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

The Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the April 22, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the addition of an exemption under the Oregon-Washington pear order for specified small quantities of fresh pear sales directly to consumers. Any

comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the Oregon-Washington pear shipping season began in August; (2) the Committee discussed and unanimously recommended this change at a public meeting and all interested parties had an opportunity to provide input; (3) this action is a relaxation of the handling regulations that is intended to benefit pear handlers while facilitating the sale of fresh, local pears directly to consumers; (4) the industry is aware of this action and wants to take advantage of the relaxation during this shipping season; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 927**

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

## PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. A new § 927.122 is added to read as follows:

**§ 927.122 Consumer direct pear sales.**

Notwithstanding any other provision of this section, fresh pears may be handled without regard to the provisions of §§ 927.41, 927.51, 927.60, and 927.70 under the following conditions:

(a) Such pears are sold in person and sold directly to consumers on the premises where grown, at packing facilities, at roadside stands, or at farmers' markets.

(b) Such pears are for home use only and are not for resale.

(c) The total quantity of such pears sold to each consumer during any single transaction does not exceed 220 pounds.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1508 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 985

**[Docket Nos. AMS–FV–09–0082; FV10–985–1A IR]**

## Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2010–2011 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule revises the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year. This rule increases the Native spearmint oil salable quantity from 980,220 pounds to 1,118,639 pounds, and the allotment percentage from 43 percent to 50 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee unanimously recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2010, through May 31, 2011; comments received by March 28, 2011 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2010–2011 marketing year were recommended by the Committee at its October 14, 2009, meeting. The Committee recommended salable quantities of 566,962 pounds and 980,265 pounds, and allotment percentages of 28 percent and 43 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on March 22, 2010 (75 FR 13445). Comments on the proposed rule were solicited from interested persons until April 6, 2010. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2010–2011 marketing year was published in the **Federal Register** on May 18, 2010 (75 FR 27631).

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met on November 19, 2010, to consider pertinent market information on the current supply, demand, and price of spearmint oil. In a vote with seven members in favor and one member opposed, the Committee recommended that the 2010–2011 Native spearmint oil allotment percentage be increased by 7 percent, from 43 percent to 50 percent. The Committee member that voted against the increase did so without further explanation.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantities, this rule increases the 2010–2011 marketing year salable quantities and allotment percentages for Native spearmint oil to 1,118,639 pounds and 50 percent.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The total industry allotment base for Native spearmint oil for the 2010–2011 marketing year was estimated by the Committee at the October 14, 2009, meeting at 2,279,687 pounds. This number was later revised at the beginning of the 2010–2011 marketing year to 2,279,439 pounds to reflect a 2009–2010 marketing year reduction of 248 pounds. Section 985.53(e) of the order requires that producers make a bona fide effort to produce all of their respective allotment base each year. Failure to do so results in a reduction in the producer's allotment base equivalent to such unproduced portion. The 248 pound reduction in allotment base reflects the total base surrendered by all producers due to the non-production of those producers' total annual allotments during the 2009–2010 marketing year.

When the revised total allotment base of 2,279,439 pounds is applied to the originally established allotment percentage of 43 percent, the initially established 2010–2011 marketing year salable quantity of 980,265 pounds is effectively modified to 980,220 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. As of May 31, 2010, the Committee estimated the reserve pool to be 506,725 pounds.

When the allotment percentage increase established by this rule is applied to each individual producer, that producer may take up to an amount equal to such allotment from their reserve for this respective class of oil. Producers that do not have excess oil in reserve on November 1, 2010, equal to or greater than that individual's respective pro rata increase in the salable quantity allotment will not be able to exercise the full marketing rights associated with such an increase. Also, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after October 31 of each marketing year. As a result, the Committee has calculated that deficiencies in individual producer's oil reserves result in an industry total of 21,081 pounds of salable quantity that will not enter the market.

Therefore, the 7 percent increase in the salable percentage established by this rule would result in a total 2010–2011 marketing year salable quantity of 1,118,639 pounds of Native spearmint oil. This reflects an additional 138,419 pounds made available to the market by this rule.

The following summarizes the Committee recommendations:

**Native Spearmint Oil Recommendation**

(A) Estimated 2010–2011 Allotment Base—2,279,687 pounds. This is the estimate on which the original 2010–2011 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2010–2011 Allotment Base—2,279,439 pounds. This is 248 pounds less than the estimated allotment base of 2,279,687 pounds. This is less because some producers failed to produce all of their 2009–2010 allotment.

(C) Original 2010–2011 Allotment Percentage—43 percent. This was unanimously recommended by the Committee on October 14, 2009.

(D) Original 2010–2011 Salable Quantity—980,265 pounds. This figure is 43 percent of the estimated 2010–2011 allotment base of 2,279,687.

(E) Adjustment to the Original 2010–2011 Salable Quantity—980,220 pounds. This figure reflects the salable quantity initially available at the beginning of the 2010–2011 marketing year due to the 248 pound reduction in the industry allotment base to 2,279,439 pounds.

(F) Current Revision to the 2010–2011 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its November 19, 2010, meeting.

(2) 2010–2011 Allotment Percentage—50 percent. This figure is derived by adding the increase of 7 percent to the original 2010–2011 allotment percentage of 43 percent.

(3) Calculated Revised 2010–2011 Salable Quantity—1,118,639 pounds. This figure is 50 percent of the revised 2010–2011 allotment base of 2,279,439 pounds, less the 21,081 pounds that are not covered by individual producer's reserves.

(4) Computed Increase in the 2010–2010 Salable Quantity—138,419 pounds. This figure is 7 percent of the revised 2010–2011 allotment base of 2,279,439 pounds less the 21,081 pound reserve deficiency.

The 2010–2011 marketing year began on June 1, 2010, with an estimated carry-in of 343,517 pounds of salable Native spearmint oil. When the estimated carry-in is added to the revised 2010–2011 salable quantity of 1,118,639 pounds, the result is a total estimated available supply of Native spearmint oil for the 2010–2011 marketing year of 1,462,156 pounds. Of this amount, 1,112,292 pounds of oil has already been sold or committed for the 2010–2011 marketing year, which leaves 349,864 pounds available for sale.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers and producers who were not in attendance. By increasing the 2010–2011 Native spearmint oil salable percentage by 7 percent, an estimated additional 138,419 pounds will be made available to the market. This amount combined with the 211,445 pounds currently available, will make a total of 349,864 pounds available to the market and bring the total available supply for the year to 1,462,156 pounds. The handlers are estimating that the demand for 2010–2011 year may be 1,133,333 pounds, which would leave 328,823 pounds as a carry out at the end of the year.

However, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year, it had anticipated that the year would end with an ample available supply. In the interim, the Native spearmint market experienced dynamic changes in the supply and demand of oil. The Committee believes that the current available supply is insufficient to satisfy current demand at reasonable price levels. Therefore, the industry may not be able to adequately meet market demand without this increase.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2010–2011 marketing year should be increased to 1,118,639 pounds and 50 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2010–2011 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2010–2011 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities,

the volume control feature of this order has small entity orientation.

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011. This rule increases the Native spearmint oil salable quantity from 980,220 pounds to 1,118,639 pounds and the allotment percentage from 43 percent to 50 percent.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and likely does not result in fewer retail sales of such products. Without volume control, producers would not be limited in the production and marketing of spearmint oil. Under those conditions, the spearmint oil market would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long term economic damage to the domestic spearmint oil industry. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry for nearly three decades and provide benefits for producers, handlers, manufacturers, and consumers.

Based on projections available at the meeting, the Committee considered a number of alternatives to this increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 19, 2010, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the salable quantity and allotment percentage for Native spearmint oil for the 2010–2011 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year, which ends on May 31, 2011; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the 2010–2011 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 985.229, paragraph (b) is revised to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 985.229 Salable quantities and allotment percentages—2010–2011 marketing year.**

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,118,639 pounds and an allotment percentage of 50 percent.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1429 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 380

### Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Interim final rule.

**SUMMARY:** The FDIC is issuing an interim final rule (''Rule''), with request for comments, which implements certain provisions of its authority to resolve covered financial companies under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). The FDIC's purpose in issuing this Rule is to provide greater clarity and certainty about how key components of this authority will be implemented and to

ensure that the liquidation process under Title II reflects the Dodd-Frank Act's mandate of transparency in the liquidation of failing systemic financial companies.

**DATES:** This rule is effective January 25, 2011. Written comments on the Rule must be received by the FDIC not later than March 28, 2011.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Agency Web site: http:www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web site.
- *E-mail: Comments@FDIC.gov.* Include ''Orderly Liquidation'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EDT).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

**FOR FURTHER INFORMATION CONTACT:** Marc Steckel, Division of Insurance and Research, 202–898–3618; R. Penfield Starke, Legal Division, 703–562–2422; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Prior to the enactment of the Dodd-Frank Act, Public Law 111–203, 12 U.S.C. 5301 *et seq.* on July 21, 2010, there was no common or adequate statutory scheme for the orderly liquidation of a financial company whose failure could adversely affect the financial stability of the United States. Instead, insured depository institutions were subject to an FDIC-administered receivership under applicable provisions of the Federal Deposit Insurance Act (''FDI Act''), insurance companies were subject to insolvency proceedings under individual State's laws, registered brokers and dealers were subject to the U.S. Bankruptcy Code and proceedings under the Securities Investor Protection Act, and other companies (including the parent holding company of one or more insured depository institutions or other financial companies) were eligible to be a debtor under the U.S. Bankruptcy Code. These disparate insolvency regimes were found to be inadequate to effectively address the actual or potential failure of a financial company that could adversely affect economic conditions or financial stability in the United States. In such a case, financial support for the company sometimes was the only viable option available for the Federal government to avoid or mitigate serious adverse effects on economic conditions and financial stability that could result from the company's failure.

With the enactment of the Dodd-Frank Act, Federal regulators have the tools to resolve a failing financial company that poses a significant risk to the financial stability of the United States. The receivership process established under Title II of the Dodd-Frank Act provides for an orderly liquidation of such a ''covered financial company'' in a way that addresses the concerns and interests of legitimate creditors while also protecting broader economic and taxpayer interests.

*Appointment of Receiver*

Title II of the Dodd-Frank Act provides a process for the appointment of the FDIC as receiver of a failing financial company that poses significant risk to the financial stability of the United States (a ''covered financial company''). Under this process, certain designated Federal regulatory authorities must recommend to the Secretary of the Treasury (the ''Secretary'') that the Secretary, after consultation with the President, make a determination that grounds exist to appoint the FDIC as receiver of the company. The Federal Reserve Board and the Securities and Exchange Commission will make the recommendation if the company or its largest subsidiary is a broker or a dealer; the Federal Reserve Board and the Director of the Federal Insurance Office will make the recommendation if the company is an insurance company; and the Federal Reserve Board and the FDIC will make the recommendation in all other cases. This procedure is similar to that which is applied to systemic risk determinations under section 13 of the FDI Act (12 U.S.C. 1813(c)(4)).

The Dodd-Frank Act requires that recommendations to the Secretary include an evaluation of whether the covered financial company is in default or in danger of default, a description of the effect that the company's default would have on the financial stability of the United States, and an evaluation of why a case under the Bankruptcy Code would not be appropriate. If the Secretary determines that the FDIC should be appointed as receiver, the Secretary must make specific findings in support, including: that the company is in default or in danger of default; that the failure of the company and its resolution under otherwise applicable Federal or State law would have serious adverse consequences on financial stability in the United States; no viable private sector alternative is available; any effect on the claims or interests of creditors, counterparties, and shareholders is appropriate; any action under the liquidation authority will avoid or mitigate such adverse effects taking into consideration the effectiveness of the action in mitigating the potential adverse effects on the financial system, cost to the general fund of the Treasury, and the potential to increase excessive risk taking; a Federal regulatory agency has ordered the company to convert all of its convertible debt instruments that are subject to regulatory order; and the company satisfies the definition of a financial company under the law.

If the Secretary makes the recommended determination and the board of directors (or similar governing body) of the company consents to the appointment, then the FDIC's appointment as receiver is effective immediately. If the company's governing body does not consent, the Dodd-Frank Act provides for immediate judicial review by the United States District Court for the District of Columbia of whether the Secretary's determinations that the covered financial company is in default or danger of default and that it meets the definition of financial company under Title II are arbitrary and capricious.[1] If the court upholds the Secretary's determination, it will issue an order authorizing the Secretary to appoint the FDIC as receiver.[2] If the court fails to act within twenty-four hours of receiving the petition, then the appointment of

[1] The immediate judicial review required by the Dodd-Frank Act contrasts with the analogous provisions in the National Bank Act (12 U.S.C. 191(b)), the Home Owner's Loan Act (12 U.S.C. 1464(c)(2)(B)), and the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(7)). Each of these statutes permits judicial review of the appointment of the receiver, but only after the appointment has taken effect.

[2] If the court overrules the Secretary's determination, the Secretary is provided the opportunity to amend and refile the petition immediately. The Dodd-Frank Act includes appeal provisions, but does not provide for a stay of the actions taken by the receiver after its appointment.

the receiver takes effect by operation of law.

*Orderly Liquidation*

Title II of the Dodd-Frank Act (entitled ''Orderly Liquidation Authority'') also defines the policy goals of the liquidation proceedings and provides the powers and duties of the FDIC as receiver for a covered financial company. Section 204(a) [3] succinctly summarizes those policy goals as the liquidation of ''failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard.'' The statute goes on to say that ''creditors and shareholders will bear the losses of the financial company'' and the FDIC is instructed to liquidate the covered financial company in a manner that maximizes the value of the company's assets, minimizes losses, mitigates risk, and minimizes moral hazard. See sections 204(a) and 210(a)(9)(E). Fundamentally, a liquidation under the Dodd-Frank Act is a liquidation of the company that imposes the losses on its creditors and shareholders. Not only is the FDIC prohibited from taking an equity interest in or becoming a shareholder of a covered financial company or any covered subsidiary, but other provisions of the Dodd-Frank Act bar any Federal government bail-out of a covered financial company. See sections 210(h)(3)(B) and 716. In this way, the statute will prevent any future taxpayer bailout by providing a liquidation process that will prevent a disorderly collapse, while ensuring that taxpayers bear none of the costs.

Similarly, management, directors, and third parties who are responsible for the company's failing financial condition will be held accountable. The FDIC must remove any management and members of the board of directors of the company who are responsible for the failing condition of the company. See section 206.

While ensuring that creditors bear the losses of the company's failure under a specific claims priority, Title II incorporates procedural and other protections for creditors to ensure that they are treated fairly. For example, creditors can file a claim with the receiver and, if dissatisfied with the decision, may file a case in U.S. district court in which no deference is given to the receiver's decision. See section 210(a)(2)–(4). Once claims are proven, the FDIC has the authority to make interim payments to the creditors, consistent with the priority for payment of their allowed claims, as it does in resolutions of insured depository institutions. This accelerated or advance dividend authority, provided in section 210(a)(7), is a valuable tool to provide payments to creditors and lessen the economic and financial impact of the closing. In addition, creditors also are guaranteed that they will receive no less than they would have received if the covered financial company had been liquidated under Chapter 7 of the Bankruptcy Code. See section 210(d)(2)(B). Shareholders of a covered financial company will not receive payment until after all other claims are fully paid. See section 210(b)(1). This helps ensure that the priority of payments will be enforced.

Parties who are familiar with the liquidation of insured depository institutions under the FDI Act or the liquidation of companies under the Bankruptcy Code will recognize many parallel provisions in Title II. Some provisions are drawn from analogous provisions of the Bankruptcy Code in order to clarify and supplement the authority that the FDIC normally exercises in a bank receivership. The provisions of Title II governing the claims process (including the availability of judicial review of claims disallowed by the receiver), the termination or repudiation of contracts, and the treatment of qualified financial contracts are modeled after the FDI Act, while provisions that empower the FDIC to avoid and recover fraudulent transfers, preferential transfers, and unauthorized transfers of property by the covered financial company are drawn from Bankruptcy Code provisions. The rules of Title II governing the setoff of mutual debt provide equivalent protections to those under the Bankruptcy Code.

The liquidation rules of Title II are designed to create parity in the treatment of creditors with the Bankruptcy Code and other normally applicable insolvency laws. This is reflected in the direct mandate in section 209 of the Dodd-Frank Act to ''to seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.'' One of the goals of the Rule is to begin the implementation of this mandate in certain key areas. Of particular significance is § 380.2 of the Rule, which clarifies that the authority to make additional payments to certain creditors will never be used to provide additional payments, beyond those appropriate under the defined priority of payments, to shareholders, subordinated debt holders, and bondholders. The FDIC, in this Rule, is making clear that these creditors of the covered financial company will never meet the statutory criteria for receiving such additional payments.

Fundamental to an orderly liquidation of a covered financial company is the ability to continue key operations, services, and transactions that will maximize the value of the firm's assets and avoid a disorderly collapse in the market place. Under the Dodd-Frank Act, this is accomplished, in part, through authority for the FDIC to charter a bridge financial company. The bridge financial company is a completely new entity that will not be saddled with the shareholders, debt, senior executives or bad assets and operations that led to the failure of the covered financial company. Shareholders, debt holders, and creditors will receive ''haircuts'' based on a clear priority of payment set out in section 210(b). As in prior bridge banks used in the resolution of large insured depository institutions, however, the bridge financial company authority will allow the FDIC to stabilize the key operations of the covered financial company by continuing valuable, systemically important operations.

Assets and operations that are necessary to maximize the value in the liquidation or prevent a disorderly collapse can be continued seamlessly through the bridge financial company. This is supported by the clear statutory provisions that contracts transferred to the bridge financial company cannot be terminated simply because they are assumed by the bridge financial company. See section 210(c)(10). As in the FDI Act, derivatives contracts that are needed to continue operations can be transferred to the bridge and cannot be terminated and netted by counterparties. This is an important tool to avoid market destabilization because, unlike the Bankruptcy Code, it can prevent the immediate and disorderly liquidation of collateral during a period of market distress. The absence of funding for continuing valuable contracts and the rights of counterparties under the Bankruptcy Code to immediately terminate those contracts resulted in a loss of billions of dollars in market value to the bankruptcy estate in the Lehman insolvency.[4]

The bridge financial company arrangement will provide a timely, efficient, and effective means for preserving value in an orderly

[3] Unless the context requires otherwise, all section references are to the Dodd-Frank Act.

[4] Examiner's Report, pg. 725, *http://lehmanreport.jenner.com/VOLUME%202.pdf.*

liquidation and avoiding a destabilizing and disorderly collapse. While the covered financial company's board of directors and the most senior management responsible for its failure will be replaced, as required by section 204(a)(2), operations would be continued by the covered financial company's employees under the strategic direction of the FDIC and contractors employed by the FDIC to help oversee those operations. Section 380.3 of the Rule addresses the treatment of these employees.

To achieve these goals, the FDIC is given broad authority under the Dodd-Frank Act to operate or liquidate the business, sell the assets, and resolve the liabilities of a covered financial company immediately after its appointment as receiver or as soon as conditions make this appropriate. This authority will enable the FDIC to act immediately to sell assets of the covered financial company to another entity or, if that is not possible, to an FDIC-created bridge financial company while maintaining critical functions. In receiverships of insured depository institutions, the ability to act quickly and decisively has been found to reduce losses to the deposit insurance funds while maintaining key banking services for depositors and businesses, and it is expected to be equally crucial in resolving non-bank financial firms under the Dodd-Frank Act.

A vital element in the essential continuity of key operations in the bridge financial company is the availability of funding for those operations. The Dodd-Frank Act provides that the FDIC may borrow funds from the Department of the Treasury to provide liquidity for the operations of the receivership and the bridge financial company. See sections 204(d) and 210(n). The bridge financial company also can access debtor-in-possession financing as needed. Once the new bridge financial company's operations have stabilized as the market recognizes that it has adequate funding and will continue key operations, the FDIC would move as expeditiously as possible to sell operations and assets back into the private sector.

An essential prerequisite for any effective resolution—particularly one designed to avoid a disorderly collapse—is advance planning, a well-developed resolution plan, and access to the supporting information needed to undertake such planning. This has been a critical component of the FDIC's ability to smoothly resolve failing banks. This critical issue is addressed in the Dodd-Frank Act in provisions that grant the FDIC back-up examination authority and require the largest companies to submit so-called ''living wills'' or resolution plans that will facilitate a rapid and orderly resolution of the company under the Bankruptcy Code. See section 165(d). Such plans are not for the purpose of supervision, which is the responsibility of the primary federal regulator and the Federal Reserve Board as designated, but for evaluation of the company's resolution plans and for the FDIC's resolution planning, readiness, and analysis of how best to be prepared for any necessary resolution. An essential part of such plans will be to describe how the resolution process can be accomplished without posing systemic risk to the public and the financial system. If the company cannot submit a credible resolution plan, the statute permits increasingly stringent requirements to be imposed that, ultimately, can lead to divestiture of assets or operations identified by the FDIC and the Federal Reserve to facilitate an orderly resolution. The FDIC will jointly adopt a rule with the Federal Reserve to implement the resolution plan requirements of the Dodd-Frank Act. The undertaking to ensure that adequate information is available and that feasible resolution plans are established is all the more critical because the largest covered financial companies operate globally and their liquidation will necessarily involve coordination among regulators around the world.

To strengthen the foundation for effective resolutions, the FDIC also will promulgate other rules and provide additional guidance in consultation with the members of the Financial Stability Oversight Council to ensure a credible liquidation process that realizes the goal of ending ''too big to fail'' while enhancing market discipline.

## II. The Notice of Proposed Rulemaking

Section 209 of the Dodd-Frank Act authorizes the FDIC, in consultation with the Financial Stability Oversight Council, to prescribe such rules and regulations as the FDIC considers necessary or appropriate to implement Title II. Section 209 also provides that, to the extent possible, the FDIC shall seek to harmonize such rules and regulations with the insolvency laws that would otherwise apply to a covered financial company. On October 19, 2010 (75 FR 64173), the FDIC caused to be published in the **Federal Register** a Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Proposed Rule''). The Proposed Rule addressed discrete issues within the following broad areas:

(1) The priority of payment to creditors (by defining categories of creditors who shall not receive any additional payments under section 210(b)(4) or (d)(4));

(2) the authority to continue operations by paying for services provided by employees and others (by clarifying the payment for services rendered under personal services contracts);

(3) the treatment of creditors (by clarifying the measure of damages for contingent claims); and

(4) the application of proceeds from the liquidation of subsidiaries (by reiterating the current treatment under corporate and insolvency law that remaining shareholder value is paid to the shareholders of any subsidiary).

The NPR solicited public comment on the proposed rule for a period of 30 days. The NPR also contained a general overview of the orderly liquidation process under Title II of the Dodd-Frank Act and solicited for a 90-day period any comments that would be more broadly related to the implementation of Title II. These comments will be considered in connection with additional rulemaking in the future.

During the 30-day comment period for comments specifically with regard to the Proposed Rule, the FDIC received 27 comment letters and held two meetings with various industry representatives and trade associations. The comments generally expressed support for the FDIC's efforts to promulgate rules for implementing the orderly liquidation authority of Title II. A majority of comments related to matters beyond the scope of the Proposed Rule, indicating the need for additional rulemaking in the future. Other comments, however, addressed specific facets of the Proposed Rule. Many commenters requested additional time to comment on various provisions of the Proposed Rule, and recommended that the FDIC delay issuing a final rule in order to permit additional comments and further consideration. The FDIC believes that additional comments would be helpful in refining certain aspects of the regulation and therefore is issuing the Rule at this time as an interim final rule, with request for comments. This action will provide the certainty of a final regulation, while permitting the FDIC to solicit and obtain additional comments that may serve as the basis for further clarification of certain issues and revision of the Rule, if necessary.

Comments on specific aspects of the Proposed Rule are addressed in the following discussion of the Rule.

**III. The Rule**

*Definitions.* Section 380.1 of the Rule gives the terms ''bridge financial company,'' ''Corporation,'' ''covered financial company,'' ''covered subsidiary,'' and ''insurance company'' the same meanings these terms are given in the Dodd-Frank Act. No comments were received on this section of the Proposed Rule.

*Treatment of Similarly Situated Creditors.* Sections 210(b)(4), (d)(4), and (h)(5)(E) of the Dodd-Frank Act permits the FDIC to pay certain creditors of a receivership more than similarly situated creditors if it is necessary (1) to ''maximize the value of the assets''; (2) to initiate and continue operations ''essential to implementation of the receivership and any bridge financial company''; (3) to ''maximize the present value return from the sale or other disposition of the assets''; or (4) to ''minimize the amount of any loss'' on sale or other disposition. In addition, section 210(d)(4) permits the FDIC to make additional payments to certain creditors if it is determined that such payments are necessary or appropriate to minimize losses from the orderly liquidation of the covered financial company. The appropriate comparison for any additional payments received by some, but not all, creditors similarly situated is the amount that the creditors should have received under the priority of expenses and unsecured claims defined in section 210(b) and other applicable law. In addition, the Dodd-Frank Act requires that all creditors of a class must receive no less than what they would have received in a Chapter 7 proceeding under the Bankruptcy Code.

Fundamental to an orderly liquidation of a covered financial company is the ability to continue key operations, services, and transactions that will maximize the value of the firm's assets and avoid a disorderly collapse in the marketplace. As is well illustrated by comparisons with some liquidations under the Bankruptcy Code, the inability to continue potentially valuable business operations can seriously impair the recoveries of creditors and increase the costs of the insolvency. In bank resolutions under the ''least costly'' requirement of the Federal Deposit Insurance Act, many institutions purchasing failed bank operations have paid a premium to acquire all deposits because of the recognized value attributable to acquiring ongoing depositor relationships. In those cases, the sale of all deposits to the acquiring institutions has maximized recoveries and minimized losses consistent with the ''least costly'' requirement.

The ability to maintain essential operations under the Dodd-Frank Act would be expected to similarly minimize losses and maximize recoveries in any liquidation, while avoiding a disorderly collapse. Examples of operations that may be essential to the implementation of the receivership or a bridge financial company include the payment of utility and other service contracts and contracts with companies that provide payments processing services. These and other contracts will allow the bridge company to preserve and maximize the value of the bridge financial company's assets and operations to the benefit of creditors, while preventing a disorderly and more costly collapse.

Other creditors who do not receive such ''additional payments,'' but who are within the same statutory priority for payment as creditors receiving ''additional payments,'' will receive payment under section 210(b)(1), or other priorities of payment specified by law. The fact that additional payments to a limited group of creditors are permitted under the strict standards provided by section 210(b)(4), (d)(4), and (h)(5)(E) of the Dodd-Frank Act and the Rule does not entitle other similarly situated creditors to payments in excess of those provided under their statutory priority. At a minimum, such creditors must receive no less than the creditor would have received under Chapter 7 of the Bankruptcy Code or any similar provision of state insolvency law applicable to the covered financial company. Sections 210(b)(7)(B) and (d)(2).

To clarify the application of these provisions and to ensure that certain categories of creditors cannot expect additional payments under them, § 380.2 of the Rule defines certain categories of creditors who never satisfy this requirement. Specifically, this section puts creditors of a potential covered financial company on notice that creditors of a covered financial company who hold certain unsecured senior debt with a term of more than 360 days will not be given additional payments compared to other general creditors such as general trade creditors or any general or senior liability of the covered financial company, nor will exceptions be made for favorable treatment of holders of subordinated debt, shareholders or other equity holders. The Rule focuses on long-term unsecured senior debt (*i.e.,* debt maturing more than 360 days after issuance) in order to distinguish bondholders from commercial lenders or other providers of financing who have made lines of credit available to the covered financial company that may be essential for its continued operation and orderly liquidation.

The treatment of long-term unsecured senior debt under the Rule is consistent with the existing treatment of such debt in bank receiverships. The FDIC has long had the authority to make additional payments to certain creditors after the closing of an insured bank under the Federal Deposit Insurance Act, 12 U.S.C. 1821(i)(3), where it will maximize recoveries and is consistent with the ''least costly'' resolution requirement or is necessary to prevent ''serious adverse effects on economic conditions or financial stability.'' 12 U.S.C. 1821(d) and 1823(c). In applying this authority, the FDIC has not made additional payments to shareholders, subordinated debt, or long-term senior debt holders of banks placed into receivership because such payments would not have helped maximize recoveries or contribute to the orderly liquidation of the failed banks. This experience supports the conclusion that the Rule appropriately clarifies that shareholders, subordinated debt, or long-term senior debt holders of future non-bank financial institutions resolved under the Dodd-Frank Act should never receive additional payments under the authority of sections 210(b)(4), (d)(4), or (h)(5)(E).

While the Rule distinguishes between long-term unsecured senior debt and shorter term unsecured debt, this distinction does not mean that shorter term debt would be provided with additional payments under sections 210(b)(4), (d)(4), or 210(h)(5)(E) of the Dodd-Frank Act. As general creditors, such debt holders normally will receive the amount established and due under section 210(b)(1), or other priorities of payment specified by law. While holders of shorter term debt may receive additional payments, this will be evaluated on a case-by-case basis and will only occur when such payments meet all of the statutory requirements. Under the Rule, the Board must specifically determine that additional payments or credit amounts to such holders are necessary and meet all of the requirements under sections 210(b)(4), (d)(4), or (h)(5)(E), as applicable. The Board's authority to make this decision cannot be delegated to management or staff of the FDIC. By requiring a vote by the Board, the Rule requires a decision on the record and ensures that the governing body of the FDIC has made a specific determination that such payments are necessary to the essential operations of the receivership or bridge

financial company, to maximize the value of the assets or returns from sale, or to minimize losses.

Much of the commenters' concern regarding the Proposed Rule's provision not to pay long-term debt holders any more than the amount they would have received if the company were liquidated under chapter 7 of the Bankruptcy Code appears to be based on the misapprehension that this provision makes it more likely that short-term debt holders will receive additional payments. Under the standards of the Dodd-Frank Act, and the Rule, that concern is unwarranted. Short-term debt holders (including, without limitation, holders of commercial paper and derivatives counterparties) are highly unlikely to meet the criteria set forth in the statute for permitting payment of additional amounts. In virtually all cases, creditors with shorter-term claims on the covered financial company will receive the same pro rata share of their claim that is being provided to the long-term debt holders. Accordingly, a potential credit provider to a company subject to the Dodd-Frank resolution process should have no expectation of treatment that differs depending upon whether it lends for a period of over 360 days or for a shorter term.

These provisions illustrate that 'additional payments' to any creditor will be very rare. Possible examples of creditors who might receive additional payments, in addition to essential and necessary service providers noted above, could include creditors with contract claims that are tied to performance bonds or other credit support needed for the covered financial company to qualify to continue other valuable contracts. Where continuation of those valuable contracts will meet the standards specified in sections 210(b)(4), (d)(4), or (h)(5)(E), as applicable, additional payments to the other creditors may also meet those standards if essential to maintain the requisite performance bonds or credit support agreements. These examples are not binding on the FDIC as receiver and serve to illustrate the exceeding rarity of any permissible additional payments.

This provision must also be considered in concert with the express provisions of section 203(c)(3)(A)(vi). This subsection requires a report to Congress not later than 60 days after appointment of the FDIC as receiver for a covered financial company specifying ''the identity of any claimant that is treated in a manner different from other similarly situated claimants,'' the amount of any payments and the reason for such action. In addition, the FDIC must post this information on a Web site maintained by the FDIC. These reports must be updated ''on a timely basis'' and no less frequently than quarterly. This information will provide other creditors with full information about such payments in a timely fashion that will permit them to file a claim asserting any challenges to the payments.

The Dodd-Frank Act also includes the power to ''claw-back'' or recoup some or all of any additional payments made to creditors if the proceeds of the sale of the covered financial company's assets are insufficient to repay any monies drawn by the FDIC from Treasury during the liquidation. See section 210(o)(1)(D). The ''claw-back'' provision only applies if the liquidation proceeds of the covered financial company are insufficient to fully repay any monies received from Treasury in the liquidation. This requirement is subject to an exception for ''payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company* * *'' It is highly unlikely that payments to short-term lenders would be found to qualify for such an exemption. A possible example of payments not subject to the ''claw-back'' provisions might be payments to trade creditors, such as a payment necessary to ensure that a vendor is able to continue to provide the failed company with essential software or hardware that could not be replicated, or payments to a utility with a local monopoly.

This provision underscores the importance of a strict application of the authority provided in sections 210(b)(4), (d)(4), and (h)(5)(E) of the Dodd-Frank Act and will help ensure that if there is any shortfall in proceeds of sale of the assets the institution's creditors will be assessed before the industry as a whole. Most importantly, under no circumstances in a Dodd-Frank liquidation will taxpayers ever be exposed to loss.

The Rule expressly acknowledges the potential importance of ongoing credit relationships with lenders who have provided lines of credit that are necessary for maintaining ongoing operations. Under section 210(c)(13)(D) of the Dodd-Frank Act, the FDIC can enforce lines of credit to the covered financial company and agree to repay the lender under the credit agreement.

A major driver of the financial crisis and the panic experienced by the market in 2008 was in part due to an overreliance by many market participants on funding through short-term, secured transactions in the repurchase market using volatile, illiquid collateral, such as mortgage-backed securities. In applying its powers under the Dodd-Frank Act, the FDIC must exercise care in valuing such collateral and will review the transaction to ensure it is not under-collateralized. Under applicable law, if the creditor is under-secured due to a decline in the value of such collateral, the unsecured portion of the claim will be paid as a general creditor claim.

Section 380.2 of the Proposed Rule also clarified that any portion of a claim secured by a legally valid and enforceable security interest that exceeds the fair market value of the collateral shall be treated as an unsecured claim and paid in accordance with the order of priority established under section 210(b)(1) of the Dodd-Frank Act. The Proposed Rule noted that collateral consisting of direct or fully guaranteed obligations of the United States or any agency of the United States (''government securities'') would be valued at par. Commenters expressed concern about the process for valuation of collateral for the purpose of determining whether a creditor is wholly or partly secured. Upon consideration of these comments, the FDIC concludes that all collateral, including government securities, should be valued at fair market value. We believe that a fair market value determination will provide crucial certainty in the valuation of this collateral. In the same vein, the FDIC believes that the establishment of a clear date for determining the value of securities or other assets that constitute valid security for a proven claim will provide potential claimants greater certainty when determining what portion of a claim may be secured, or unsecured if under-collateralized. In some circumstances of great market volatility, it may be appropriate to determine the value of collateral based on fair market values existing on the day prior to the appointment of the FDIC as receiver. The FDIC is soliciting comments on this issue. The Rule establishes that the FDIC will use the fair market value of collateral as of the date that the FDIC was appointed as receiver. The provision in the Proposed Rule that the fair market value of government issued or government guaranteed securities shall be deemed to be par value has been eliminated in the Rule.

*Personal Services Agreements.* Section 380.3 of the Rule concerns personal services agreements, which may include, without limitation, collective bargaining agreements. Like other contracts with the covered financial company, a personal services agreement is subject to repudiation by

the receiver if the agreement is determined to be burdensome and its repudiation would promote the orderly liquidation of the company. Prior to determining whether to repudiate, however, the FDIC as receiver may need to utilize the services of employees who have a personal services agreement with the covered financial company. The Rule provides that if the FDIC accepts services from employees during the receivership or any period where some or all of the operations of the covered financial company are continued by a bridge financial company, absent a contrary agreement or consent by the employee, those employees shall be paid according to the terms and conditions of their personal service agreement and such payments shall be treated as an administrative expense of the receiver. The acceptance of services from the employees by the FDIC as receiver (or by a bridge financial company) does not impair the receiver's ability subsequently to repudiate a personal services agreement.[5] The Rule will also not impair the ability of the receiver to reach an agreement with the employee that is more favorable to the FDIC than the original personal services agreement. The Rule also clarifies that a personal service agreement will not continue to apply to employees in connection with a sale or transfer of a subsidiary or the transfer of certain operations or assets of the covered financial company unless the acquiring party expressly agrees to assume the personal service agreement. Likewise, the transfer will not be predicated on such assumption. Paragraph (e) of § 380.3 clarifies that the provision for payment of employees does not apply to senior executives or directors of the covered financial company,[6] nor does it impair the ability of the receiver to recover compensation previously paid to senior executives or directors under section 210(s) of the Dodd-Frank Act. The definition of ''senior executive'' in this section substantially follows the definition of ''executive officer'' in Regulation O of the Board of Governors of the Federal Reserve System (12 CFR 215.2). This definition is commonly understood and accepted.

*Contingent Obligations.* Section 380.4 of the Rule addresses the treatment of contingent claims in the receivership of a covered financial company. The text of the Proposed Rule was revised in the Rule in response to comments recommending that the rule eliminate any ambiguity regarding the treatment of contingent claims. The revised text strengthens the Rule to make clear that the treatment of contingent claims under Title II parallels their treatment under the Bankruptcy Code. The text of the Proposed Rule also has been slightly modified in the Rule in order to more precisely follow the text of section 210(c)(3)(E) of the Dodd-Frank Act, which it will implement.

Under § 380.4, holders of contingent claims should expect to receive no less than the amount they would have received had the covered financial company had been a debtor in a case under chapter 7 of the U.S. Bankruptcy Code. Like the Bankruptcy Code, the Dodd-Frank Act defines the term ''claim'' to include a right to payment that is contingent (see 11 U.S.C. 101(5); section 201(a)(4)). Accordingly, paragraph (a) of § 380.4 affirms that that the FDIC as receiver of a covered financial company shall not disallow a claim solely because the claim is based on an obligation that was contingent as of the date of the appointment of the receiver. The Bankruptcy Code requires the estimation of any claim the liquidation of which would unduly delay the administration of the estate, such as a contingent claim (*see* 11 U.S.C. 502(c)). Similarly, paragraph (a) of § 380.4 provides that to the extent that an obligation is contingent, the receiver shall estimate the value of the claim, as such value is measured based upon the likelihood that the contingent obligation would become fixed and the probable magnitude of the claim. The Bankruptcy Code does not specify when a contingent claim should be estimated, however. The FDIC is soliciting additional comments regarding whether the receiver should designate a specific time during the term of the receivership to estimate contingent claims.

Paragraph (b) of § 380.4 implements section 210(c)(3)(E) of the Dodd-Frank Act, which provides that the FDIC may prescribe by rule or regulation that actual direct compensatory damages for repudiation of a contingent guarantee, letter of credit, loan commitment, or similar credit obligation of a covered financial company shall be no less than the estimated value of the claim as of the date of the appointment of the FDIC as receiver for the company, as such value is measured based upon the likelihood that such contingent obligation would become fixed and the probable magnitude of the claim.

*Insurance Company Subsidiaries.* Section 380.5 of the Rule provides that where the FDIC acts as receiver for a direct or indirect subsidiary of an insurance company that is not an insured depository institution or an insurance company itself, the value realized from the liquidation or other liquidation of the subsidiary will be distributed according to the order of priorities set forth in section 210(b)(1) of the Dodd-Frank Act. In order to clarify that such value will be available to the policyholders of the parent insurance company to the extent required by the applicable State laws and regulations, the Rule expressly recognizes the requirement that the receiver remit all proceeds due to the parent insurance company in accordance with the order of priority set forth in section 210(b)(1). The only comment concerning § 380.5 of the Proposed Rule asked for confirmation that an insurance company (and its policyholders) might submit different claims according to its capacity as a shareholder, general creditor, or otherwise in relation to the order of priority. The FDIC does not believe that the rule text creates any uncertainty in this regard and so § 380.5 is unchanged in the Rule.

*Liens on Insurance Company Assets.* Section 380.6 of the Rule limits the ability of the FDIC to take liens on insurance company assets and assets of the insurance company's covered subsidiaries, under certain circumstances after the FDIC has been appointed receiver. Section 204 of the Dodd-Frank Act permits the FDIC to provide funding for the orderly liquidation of covered financial companies and covered subsidiaries that the FDIC determines, in its discretion, are necessary or appropriate by, among other things, making loans, acquiring debt, purchasing assets or guaranteeing them against loss, assuming or guaranteeing obligations, making payments, or entering into certain transactions. In particular, pursuant to section 204(d)(4), the FDIC is authorized to take liens ''on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection.''

Section 203(e) provides that, in general, if an insurance company is a

[5] In this regard, the Proposed Rule is consistent with the Federal Deposit Insurance Act regarding the treatment of personal service contracts (*see* 12 U.S.C. 1821(e)(7)).

[6] Section 213(d) of the Dodd-Frank Act requires the FDIC and the Board of Governors of the Federal Reserve System, after consultation with the Financial Stability Oversight Council, to prescribe, *inter alia,* ''rules, regulations, or guidelines to further define the term ''senior executive'' for the purposes of that section, relating to the imposition of prohibitions on the participation of certain persons in the conduct of the affairs of a financial company. In the future, the FDIC will conform the definition of ''senior executive'' in § 380.3 of the Proposed Rule to the definition that is adopted in the regulation that is adopted pursuant to section 213(d).

covered financial company, the liquidation or rehabilitation of such insurance company shall be conducted as provided under the laws and requirements of the State. However, a subsidiary or affiliate (including a parent entity) of an insurance company, where such subsidiary or affiliate is not itself an insurance company, will be subject to orderly liquidation under Title II without regard to State law.

The Rule recognizes that the orderly liquidation of such a covered affiliate or subsidiary should not unnecessarily interfere with the liquidation or rehabilitation of the insurance company, and that the interests of the policy holders in the assets of the insurance company should be respected. Accordingly, the Rule provides that the FDIC will avoid taking a lien on some or all of the assets of a covered financial company that is an insurance company or a covered subsidiary or affiliate of an insurance company unless it makes a determination, in its sole discretion, that taking such a lien is necessary for the orderly liquidation of the company (or subsidiary or affiliate) and will not unduly impede or delay the liquidation or rehabilitation of such insurance company, or the recoveries by its policyholders. The final paragraph of § 380.6 makes clear that no restriction on taking a lien on assets of a covered financial company or any covered subsidiary or affiliate will limit or restrict the ability of the FDIC or the receiver to take a lien on in such assets in connection with the sale of such entities or any of their assets on a financed basis to secure any financing being provided in connection with such sale. Commenters expressed concerns that the language of the Proposed Rule was not sufficiently clear that the power to take a lien on a company's assets was limited to the assets of the company that received the advance of funds. The Rule clarifies the language in this respect. In all other aspects, however, the FDIC believes that the limitations set forth in the Proposed Rule are clear and appropriate and require no changes in the Rule. The determination that taking a lien is necessary for the orderly liquidation of the company (or subsidiary or affiliate) and will not unduly impede or delay the liquidation or rehabilitation of the insurance company or the recoveries by its policyholders should be committed to the discretion of the FDIC. By so providing, the FDIC's rules will best avoid the possibility of harmful delay and help ensure a speedy and orderly liquidation process.

## IV. Request for Comments

The FDIC requests comments on any aspect of the Rule that would be helpful in refining the Rule further. In addition, the FDIC specifically requests comments on the following issues:

1. Are there additional ways to reduce moral hazard and increase market discipline and to clarify that all creditors should assume that they will receive no additional payments and their recovery will be limited to what will be paid according to the order of priorities established under section 210(b)?

2. Subsection 380.2 precludes any ''additional payments'' under the statute to holders of long term debt, which is defined as debt with a term in excess of 360 days. What are the positive and negative consequences that this may have for market stability? What effect might this have on long term debt and its role in funding for financial companies? Is additional flexibility needed? Are there additional ways to counteract any impression that shorter term debt is not at risk? Does using a term of 360 days adequately distinguish longer term from shorter term debt? Should a different period be used?

3. What additional guidelines would be useful in creating certainty with respect to establishment of fair market value of various types of collateral for secured claims?

4. Should the date of appointment of the receiver be used as the valuation date for all types of collateral, or only government securities or other publicly traded securities?

5. Who should receive the benefit or burden of market fluctuation between the date of appointment of the receiver and the date of payment of a claim? For example, if a claim is for $100, and the collateral is valued at $98 on the date of appointment of the receiver, and at $102 at the date of payment of the claim, should the claimant receive $98 plus an unsecured claim of $2, should they receive the full value of their secured claim of $100, or should they receive the full value of the collateral, i.e., $102?

6. Should the FDIC designate a specific time during the term of the receivership to estimate contingent claims?

All comments must be received by the FDIC not later than March 28, 2011.

## V. Regulatory Analysis and Procedure

### *A. Paperwork Reduction Act*

The Rule establishes internal rules and procedures for the liquidation of a failed systemically important financial company. It does not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. (5 U.S.C. 603(a)). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Rule will not have a significant impact on a substantial number of small entities. The Rule will clarify rules and procedures for the liquidation of a failed systemically important financial company, which will provide internal guidance to FDIC personnel performing the liquidation of such a company and will address any uncertainty in the financial system as to how the orderly liquidation of such a company would operate. As such, the Rule would not impose a regulatory burden on entities of any size and does not significantly impact small entities.

### *C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the Rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

### *D. Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget has determined that the Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Rule may be reviewed.

### *E. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal

banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Rule in a simple and straightforward manner.

**List of Subjects in 12 CFR Part 380**

Holding companies, Insurance companies.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations by adding new part 380 as follows:

## PART 380—ORDERLY LIQUIDATION AUTHORITY

Sec.

380.1 Definitions.
380.2 Treatment of similarly situated claimants.
380.3 Treatment of personal service agreements.
380.4 Provability of claims based on contingent obligations.
380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.
380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.

**Authority:** 12 U.S.C. 5301 *et seq.*

### § 380.1 Definitions.

For purposes of this part, the following terms are defined as follows:

(a) The term ''bridge financial company'' means a new financial company organized by the Corporation in accordance with 12 U.S.C. 5390(h) for the purpose of resolving a covered financial company.

(b) The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(c) The term ''covered financial company'' means:

(1) A financial company for which a determination has been made under 12 U.S.C. 5383(b) and

(2) Does not include an insured depository institution.

(d) The term ''covered subsidiary'' means a subsidiary of a covered financial company, other than:

(1) An insured depository institution;

(2) An insurance company; or

(3) A covered broker or dealer.

(e) The term ''insurance company'' means any entity that is:

(1) Engaged in the business of insurance;

(2) Subject to regulation by a State insurance regulator; and

(3) Covered by a State law that is designed to specifically deal with the rehabilitation, liquidation or insolvency of an insurance company.

### § 380.2 Treatment of similarly situated claimants.

(a) For the purposes of this section, the term ''long-term senior debt'' means senior debt issued by the covered financial company to bondholders or other creditors that has a term of more than 360 days. It does not include partially funded, revolving or other open lines of credit that are necessary to continuing operations essential to the receivership or any bridge financial company, nor to any contracts to extend credit enforced by the receiver under 12 U.S.C. 5390(c)(13)(D).

(b) In applying any provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act permitting the Corporation to exercise its discretion, upon appropriate determination, to make payments or credit amounts, pursuant to 12 U.S.C. 5390(b)(4), (d)(4), or (h)(5)(E) to or for some creditors but not others similarly situated at the same level of payment priority, the Corporation shall not exercise such authority in a manner that would result in the following recovering more than the amount established and due under 12 U.S.C. 5390(b)(1), or other priorities of payment specified by law:

(1) Holders of long-term senior debt who have a claim entitled to priority of payment at the level set out under 12 U.S.C. 5390(b)(1)(E);

(2) Holders of subordinated debt who have a claim entitled to priority of payment at the level set out under 12 U.S.C. 5390(b)(1)(F);

(3) Shareholders, members, general partners, limited partners, or other persons who have a claim entitled to priority of payment at the level set out under 12 U.S.C. 5390 (b)(1)(H); or

(4) Other holders of claims entitled to priority of payment at the level set out under 12 U.S.C. 5390(b)(1)(E) unless the Corporation, through the affirmative vote of a majority the members of the Board of Directors then serving, and in its sole discretion, specifically determines that additional payments or credit amounts to such holders are necessary and meet all of the requirements under 12 U.S.C. 5390(b)(4), (d)(4), or (h)(5)(E), as applicable. The authority of the Board to make the foregoing determination cannot be delegated.

(c) Proven claims secured by a legally valid and enforceable or perfected security interest or security entitlement in any property or other assets of the covered financial company shall be paid or satisfied in full to the extent of such collateral, but any portion of such claim which exceeds an amount equal to the fair market value of such property or other assets shall be treated as an unsecured claim and paid in accordance with the priorities established in 12 U.S.C. 5390(b) and otherwise applicable provisions. Such fair market value shall be determined as of the date the Corporation was appointed receiver of the covered financial company.

### § 380.3 Treatment of personal service agreements.

(a) *Definitions.* (1) The term ''personal service agreement'' means a written agreement between an employee and a covered financial company, covered subsidiary or a bridge financial company setting forth the terms of employment. This term also includes an agreement between any group or class of employees and a covered financial company, covered subsidiary or a bridge financial company, including, without limitation, a collective bargaining agreement.

(2) The term ''senior executive'' means for purposes of this section, any person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company, whether or not: The person has an official title; the title designates the officer an assistant; or the person is serving without salary or other compensation. The chairman of the board, the president, every vice president, the secretary, and the treasurer or chief financial officer, general partner and manager of a company are considered executive officers, unless the person is excluded, by resolution of the board of directors, the bylaws, the operating agreement or the partnership agreement of the company, from participation (other than in the capacity of a director) in major policymaking functions of the company, and the person does not actually participate therein.

(b)(1) If before repudiation or disaffirmance of a personal service agreement, the Corporation as receiver of a covered financial company, or the Corporation as receiver of a bridge financial company accepts performance of services rendered under such agreement, then:

(i) The terms and conditions of such agreement shall apply to the performance of such services; and

(ii) Any payments for the services accepted by the Corporation as receiver shall be treated as an administrative expense of the receiver.

(2) If a bridge financial company accepts performance of services rendered under such agreement, then the terms and conditions of such agreement shall apply to the performance of such services.

(c) No party acquiring a covered financial company or any operational unit, subsidiary or assets thereof from the Corporation as receiver or from any bridge financial company shall be bound by a personal service agreement unless the acquiring party expressly assumes the personal services agreement.

(d) The acceptance by the Corporation as receiver for a covered financial company, by any bridge financial company or the Corporation as receiver of a bridge financial company of services subject to a personal service agreement shall not limit or impair the authority of the Corporation as receiver to disaffirm or repudiate any personal service agreement in the manner provided for the disaffirmance or repudiation of any agreement under 12 U.S.C. 5390.

(e) Paragraph (b) of this section shall not apply to any personal service agreement with any senior executive or director of the covered financial company or covered subsidiary, nor shall it in any way limit or impair the ability of the receiver to recover compensation from any senior executive or director of a failed financial company under 12 U.S.C. 5390.

**§ 380.4 Provability of claims based on contingent obligations.**

(a) The Corporation as receiver shall not disallow a claim based on an obligation of the covered financial company solely because the obligation is contingent. To the extent the obligation is contingent, the receiver shall estimate the value of the claim, as such value is measured based upon the likelihood that such contingent obligation would become fixed and the probable magnitude thereof.

(b) If the receiver repudiates a contingent obligation of a covered financial company consisting of a guarantee, letter of credit, loan commitment, or similar credit obligation, the actual direct compensatory damages for repudiation shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based upon the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

**§ 380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.**

The Corporation shall distribute the value realized from the liquidation, transfer, sale or other disposition of the direct or indirect subsidiaries of an insurance company, that are not themselves insurance companies, solely in accordance with the order of priorities set forth in 12 U.S.C. 5390(b)(1).

**§ 380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.**

(a) In the event that the Corporation makes funds available to a covered financial company that is an insurance company or is a covered subsidiary or affiliate of an insurance company or enters into any other transaction with respect to such covered entity under 12 U.S.C. 5384(d), the Corporation will exercise its right to take liens on some or all assets of the covered entities receiving such funds to secure repayment of any such transactions only when the Corporation, in its sole discretion, determines that:

(1) Taking such lien is necessary for the orderly liquidation of the entity; and

(2) Taking such lien will not either unduly impede or delay the liquidation or rehabilitation of such insurance company, or the recovery by its policyholders.

(b) This section shall not be construed to restrict or impair the ability of the Corporation to take a lien on any or all of the assets of any covered financial company or covered subsidiary or affiliate in order to secure financing provided by the Corporation or the receiver in connection with the sale or transfer of the covered financial company or covered subsidiary or affiliate or any or all of the assets of such covered entity.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of January, 2011.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–1379 Filed 1–24–11; 8:45 am]

**BILLING CODE 6741–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0948; Directorate Identifier 2010–CE–041–AD; Amendment 39–16575; AD 2011–02–02]**

**RIN 2120–AA64**

## Airworthiness Directives; SOCATA Model TBM 700 Airplanes

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

**ACTION:** Final rule.

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

Following the rupture of an alternator and vapour cycle cooling system pulley drive assembly, the AD 2008–0067–E was published to require the replacement of the pulley drive assembly by a new one of an improved design.

Later on, cases of rupture of the alternator and vapour cycle cooling system compressor drive shaft and of cracks on the standby-alternator and compressor support were reportedly found.

Such failures could lead to the loss of the alternator and of the vapour cycle cooling systems, and could also cause mechanical damage inside the power plant compartment.

To address this condition, the AD 2008–0129–E superseded AD 2008–0067–E and mandates the removal, as a temporary measure, of the compressor drive belt and of the torque limiter, the conditional replacement of the pulley drive shear shaft, and repetitive inspections for cracks of the pulley drive assembly and of the alternator/compressor support.

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

**DATES:** This AD becomes effective March 1, 2011.

On March 1, 2011, the Director of the Federal Register approved the incorporation by reference of SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–176, amendment 1, dated February, 2010, listed in this AD.

As of October 8, 2008 (73 FR 54067, September 18, 2008), the Director of the Federal Register approved the incorporation by reference of EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008, listed in this AD.

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

For service information identified in this AD, contact SOCATA—Direction des Services, 65921 Tarbes Cedex 9, France; *telephone:* +33 (0)5 62 41 73 00; fax: +33 (0)5 62 41 7–54; or in the United States contact SOCATA North America, Inc., North Perry Airport, 7501

South Airport Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

**FOR FURTHER INFORMATION CONTACT:** Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, ACE–112, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2010 (75 FR 59658), and proposed to supersede AD 2008–19–06, Amendment 39–15673 (73 FR 54067; September 18, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> Following the rupture of an alternator and vapour cycle cooling system pulley drive assembly, the AD 2008–0067–E was published to require the replacement of the pulley drive assembly by a new one of an improved design.
>
> Later on, cases of rupture of the alternator and vapour cycle cooling system compressor drive shaft and of cracks on the standby-alternator and compressor support were reportedly found.
>
> Such failures could lead to the loss of the alternator and of the vapour cycle cooling systems, and could also cause mechanical damage inside the power plant compartment.
>
> To address this condition, the AD 2008–0129–E superseded AD 2008–0067–E and mandates the removal, as a temporary measure, of the compressor drive belt and of the torque limiter, the conditional replacement of the pulley drive shear shaft, and repetitive inspections for cracks of the pulley drive assembly and of the alternator/compressor support.
>
> Revision 1 of the AD 2008–0129–E introduced an alternative temporary solution with the aim to restore the capability to make use of the air conditioning system. This solution consists in replacing the original pulley drive assembly by a time-limited assembly of a new design, corresponding to the SOCATA modification MOD 70–0240–21.
>
> A definitive solution has been released to production aeroplanes by implementation of SOCATA modification MOD 70–0243–21 or Service Bulletin (SB) 70–176–21 for in-service aeroplanes.
>
> This AD which supersedes EASA AD 2008–0129R1–E retaining its requirements, limits the AD applicability and requires accomplishment of the terminating action.

**Comments**

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

**Conclusion**

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

**Differences Between This AD and the MCAI or Service Information**

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

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

**Costs of Compliance**

We estimate that this AD will affect 66 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $44,880, or $680 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39–15673 (73 FR 54067; September 18, 2008) and adding the following new AD:

**2011–02–02 SOCATA:** Amendment 39–16575; Docket No. FAA–2010–0948; Directorate Identifier 2010–CE–041–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective March 1, 2011.

**Affected ADs**

(b) This AD supersedes AD 2008–19–06, Amendment 39–15673.

**Applicability**

(c) This AD applies to SOCATA TBM 700 airplanes, serial numbers (S/Ns) 434 through 509, 511 through 516, 519, 520, and 522 through 525, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 21: Air Conditioning.

**Reason**

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

Following the rupture of an alternator and vapour cycle cooling system pulley drive assembly, the AD 2008–0067–E was published to require the replacement of the pulley drive assembly by a new one of an improved design.

Later on, cases of rupture of the alternator and vapour cycle cooling system compressor drive shaft and of cracks on the standby-alternator and compressor support were reportedly found.

Such failures could lead to the loss of the alternator and of the vapour cycle cooling systems, and could also cause mechanical damage inside the power plant compartment.

To address this condition, the AD 2008–0129–E superseded AD 2008–0067–E and mandates the removal, as a temporary measure, of the compressor drive belt and of the torque limiter, the conditional replacement of the pulley drive shear shaft, and repetitive inspections for cracks of the pulley drive assembly and of the alternator/compressor support.

Revision 1 of the AD 2008–0129–E introduced an alternative temporary solution with the aim to restore the capability to make use of the air conditioning system. This solution consists in replacing the original pulley drive assembly by a time-limited assembly of a new design, corresponding to the SOCATA modification MOD 70–0240–21.

A definitive solution has been released to production aeroplanes by implementation of SOCATA modification MOD 70–0243–21 or Service Bulletin (SB) 70–176–21 for in-service aeroplanes.

This AD which supersedes EASA AD 2008–0129R1–E retaining its requirements, limits the AD applicability and requires accomplishment of the terminating action.

**Actions and Compliance**

(f) For airplanes S/Ns 434 through 459 only, unless already done, before further flight as of September 18, 2008 (the effective date of AD 2008–19–06), do the following actions following EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008:

(1) Remove the pulley drive assembly, the torque limiter, the compressor drive belt, and the alternator/compressor support.

(2) Inspect for cracks the pulley drive surfaces and the alternator/compressor support welds.

(i) If any crack is detected, before further flight, replace the pulley drive assembly following the accomplishment instructions in SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–176, amendment 1, dated February 2010.

(ii) Replacement of the assembly incorporates replacement of the pulley drive sheer shaft required by paragraph (f)(3) of this AD for airplanes with 30 hours time-in-service (TIS) or more with the torque limiter installed on the pulley drive shear shaft.

(3) Replace any pulley drive shear shaft that has accumulated 30 hours TIS or more with the torque limiter installed. This action is not required if you replaced the whole assembly per paragraph (f)(2)(i) of this AD.

(4) Re-install the pulley drive assembly and the alternator/compressor support, without re-installing the compressor drive belt or the torque limiter.

(5) Insert EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008, in the limitations section of the pilot's operating handbook and install on the instrument panel and in the pilot's primary field of vision a placard with the following text:

''AIR COND'' INOPERATIVE RECOMMENDED ''AIR COND'' SWITCH POSITION: ''MANUAL''

(g) For all S/N airplanes;

(1) Within 100 hours TIS after September 18, 2008 (the effective date of AD 2008–19–06), and repetitively thereafter at intervals not to exceed 100 hours TIS, inspect for cracks on the pulley drive surfaces and the alternator/compressor support welds, following EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008.

(i) For airplanes S/Ns 434 through 459, the inspection required in paragraph (f)(2) of this AD is considered the initial inspection required in paragraph (g)(1) of this AD.

(ii) For accomplishment of the repetitive inspections required by paragraph (g)(1) of this AD, paragraph C.2 of the accomplishment instructions of EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008, does not apply since the torque limiter has already been removed.

(2) If cracks are found during any of the inspections required in paragraph (g)(1) of this AD, before further flight, replace the assembly following SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–176, amendment 1, dated February 2010.

(h) At the next annual inspection or within 5 months after March 1, 2011 (the effective date of this AD), whichever occurs first, replace the alternator/compressor support and pulley drive assemblies with P/N T700G215500700100 (alternator/compressor support) and P/N T700G215513500000 (Pulley drive assembly), following the accomplishment instructions of SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–176, amendment 1, dated February, 2010.

(1) After March 1, 2011 (the effective date of this AD), do not install alternator/compressor support P/N T700G215500700000 and a pulley drive assembly P/N T700G215510000000.

(2) Accomplishment of corrective actions as required by paragraph (f)(2)(i), paragraph (g)(2), or paragraph (h) of this AD terminates the actions required in paragraphs (f) and (g) of this AD.

**Note 1:** SOCATA SB 70–161, amendment 4, dated October 2009, has been published by SOCATA in order to close the range of airplane S/Ns concerned by temporary actions.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Special Flight Permit**

(j) We are allowing permission to ferry an airplane to a maintenance location to accomplish actions required by paragraph (1) of this AD provided that the air conditioning is switched off during the entire flight duration.

**Related Information**

(k) Refer to MCAI EASA AD No.: 2010–0130, dated June 29, 2010; EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008; and SOCATA Mandatory TBM Aircraft

Service Bulletin SB 70–176, amendment 1, dated February, 2010, for related information.

**Material Incorporated by Reference**

(h) You must use SOCATA Mandatory TBM Aircraft Service Bulletin Service Bulletin SB 70–176, amendment 1, dated February, 2010, and EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–176, amendment 1, dated February, 2010 under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On October 8, 2008 (73 FR 54067, September 18, 2008), the Director of the Federal Register previously approved the incorporation by reference of EADS SOCATA Mandatory TBM Aircraft Alert Service Bulletin SB 70–161, amendment 2, dated July 2008.

(3) For service information identified in this AD, contact SOCATA—Direction des Services, 65921 Tarbes Cedex 9, France; *telephone:* +33 (0)5 62 41 73 00; *fax:* +33 (0)5 62 41 7–54; or in the United States contact SOCATA North America, Inc., North Perry Airport, 7501 South Airport Road, Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141.

(4) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on January 4, 2011.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–370 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0029; Directorate Identifier 2010–NM–279–AD; Amendment 39–16583; AD 2011–02–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–200 Series Airplanes; Model A330–300 Series Airplanes; Model A340–200 Series Airplanes; and Model A340–300 Series Airplanes

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

**ACTION:** Final rule; request for comments.

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

When there are significant differences between all airspeed sources, the flight controls of an Airbus A330 or A340 aeroplane will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the Flight Directors (FD) bars are automatically removed.

It has been identified that, after such an event, if two airspeed sources become similar while still erroneous, the flight guidance computers will:

—Display FD bars again, and

—Enable autopilot and auto-thrust re-engagement

However, in some cases, the autopilot orders may be inappropriate, such as possible abrupt pitch command.

* * * * *

The unsafe condition is the potential for abrupt pitch command which may lead to unexpected maneuvers of the airplane and cause injuries of the crew and passengers, as well as reduced controllability of the airplane, and increased pilot workload. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 9, 2011.

We must receive comments on this AD by March 11, 2011.

**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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0271, dated December 22, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

When there are significant differences between all airspeed sources, the flight controls of an Airbus A330 or A340 aeroplane will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the Flight Directors (FD) bars are automatically removed.

It has been identified that, after such an event, if two airspeed sources become similar while still erroneous, the flight guidance computers will:

—Display FD bars again, and

—Enable autopilot and auto-thrust re-engagement

However, in some cases, the autopilot orders may be inappropriate, such as possible abrupt pitch command.

In order to prevent such event which may, under specific circumstances, constitute an unsafe condition, this AD requires an amendment of the Flight Manual to ensure that flight crews apply the appropriate operational procedure.

The unsafe condition is the potential for abrupt pitch command which may lead to unexpected maneuvers of the airplane and cause injuries of the crew and passengers, as well as reduced controllability of the airplane and increased pilot workload. Required actions include revising the limitations and abnormal sections of the airplane flight manual to include a procedure for when the autopilot and auto-thrust are automatically disconnected and flight controls have reverted to alternate law. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Airbus has issued A330/A340 Temporary Revisions TR149 and TR150, both Issue 1.0, both dated December 20, 2010, to the Airbus A330/A340 Airplane Flight Manual. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between the AD and the MCAI or Service Information**

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

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the potential for abrupt pitch command which may lead to unexpected maneuvers of the airplane and cause injuries of the crew and passengers, as well as reduced controllability of the airplane, and increased pilot workload. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0029; Directorate Identifier 2010–NM–279–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2011–02–09 Airbus:** Amendment 39–16583. Docket No. FAA–2011–0029; Directorate Identifier 2010–NM–279–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all serial numbers.

**Subject**

(d) Air Transport Association (ATA) of America Code 22: Auto Flight.

**Reason**

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

When there are significant differences between all airspeed sources, the flight controls of an Airbus A330 or A340 aeroplane will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the Flight Directors (FD) bars are automatically removed.

It has been identified that, after such an event, if two airspeed sources become similar while still erroneous, the flight guidance computers will:

—Display FD bars again, and

—Enable autopilot and auto-thrust re-engagement

However, in some cases, the autopilot orders may be inappropriate, such as possible abrupt pitch command.

* * * * *

The unsafe condition is the potential for abrupt pitch command which may lead to unexpected maneuvers of the airplane and cause injuries of the crew and passengers, as well as reduced controllability of the airplane and increased pilot workload.

**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.

**Actions**

(g) Within 15 days after the effective date of this AD, do the actions in paragraph (g)(1) or (g)(2) of this AD.

(1) Revise the Limitations and Abnormal Sections of the Airbus A330/A340 Airplane Flight Manual (AFM) to include the following statement and operate the airplane according to these limitations and procedures. This may be done by inserting a copy of this AD in the AFM.

''PROCEDURE:

When autopilot and auto-thrust are automatically disconnected and flight controls have reverted to alternate law:

—Do not engage the AP and the A/THR, even if FD bars have reappeared

—Do not follow the FD orders

—ALL SPEED INDICATIONS—X–CHECK

• If unreliable speed indication is suspected:

—UNRELIABLE SPEED INDIC/ADR CHECK PROC—APPLY

• If at least two ADRs provide reliable speed indication for at least 30 seconds, and the aircraft is stablised on the intended path:

AP/FD and A/THR—As required''

**Note 1:** When a statement identical to that in paragraph (g)(1) of this AD has been included in the general revisions of the Limitations and Abnormal Sections of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(2) Revise the Limitations and Abnormal Sections of the Airbus A330/A340 Airplane Flight Manual (AFM) to include the information in Airbus A330/A340 Temporary Revision (TR) TR149 (for Model A330 airplanes) or TR150 (for Model A340–200 and –300 series airplanes), both Issue 1.0, both dated December 20, 2010. These TRs introduce procedures for operation of the auto pilot and auto-thrust disconnect. Operate the airplane according to the limitations and procedures in the TRs.

**Note 2:** This may be done by inserting copies of Airbus A330/A340 TR TR149 or TR150, both Issue 1.0, both dated December 20, 2010; as applicable; in the Airbus A330/A340 AFM. When these TRs have been included in general revisions of the AFM, the general revisions may be inserted in the AFM, and the TRs may be removed.

**FAA AD Differences**

**Note 3:** This AD differs from the MCAI and/or service information as follows: No Differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**Related Information**

(i) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0271, dated December 22, 2010; and Airbus A330/A340 TR TR149 and TR150, both Issue 1.0, both dated December 20, 2010, to the Airbus A330/A340 AFM; for related information.

**Material Incorporated by Reference**

(j) You must use Airbus A330/A340 Temporary Revision TR149, Issue 1.0, dated December 20, 2010, to the Airbus A330/A340 Airplane Flight Manual; and Airbus A330/A340 Temporary Revision TR150, Issue 1.0, dated December 20, 2010, to the Airbus A330/A340 Airplane Flight Manual; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on January 12, 2011.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–1225 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0677; Directorate Identifier 2010–NM–075–AD; Amendment 39–16578; AD 2011–02–05]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 727 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires inspections for scribe lines in the fuselage skin at skin lap joints and butt joints, the skin at certain external approved repairs, the skin around external features such as antennas, and the skin at decals and fairings; and related investigative and corrective actions if necessary. This AD was prompted by reports of scribe lines found at skin lap joints and butt joints, around external repairs 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 rapid decompression of the airplane.

**DATES:** This AD is effective March 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2011.

**ADDRESSES:** For service information identified in this 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (*phone:* 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on July 7, 2010 (75 FR 38950). That NPRM proposed to require inspections for scribe lines in the fuselage skin at skin lap joints and butt joints, the skin at certain external approved repairs, the skin around external features such as antennas, and the skin at decals and fairings; and related investigative and corrective actions if necessary.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

### Support for the NPRM

Boeing supports the intent of the NPRM.

### Request To Revise Compliance Time

FedEx Express (FedEx) requested that we revise the compliance time in paragraph (g) of the NPRM to add an additional option of ''at the next scheduled 'C' check (30 months) from the effective date of the AD.'' FedEx stated that it determined that the proposed inspection threshold and intervals would not fit within its planned scheduled maintenance checks, and the requested adjustment to the compliance time would allow FedEx to mitigate the need to schedule special visits to accomplish the inspections.

We disagree with the request to revise the compliance time. In developing an appropriate compliance time for this AD, we considered not only the safety implications, but the manufacturer's recommendations, the availability of required parts, and the practical aspect of accomplishing the modification within an interval of time that corresponds to typical scheduled maintenance for affected operators. Under the provisions of paragraph (m) of this AD, however, we might consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. In addition, FedEx did not provide any technical justification for the request. We have not changed the final rule in regard to this issue.

### Explanation of Change to This AD

We added a new paragraph (l) to this final rule to provide information on the federal Paperwork Reduction Act. We have reidentified subsequent paragraphs accordingly.

### Conclusion

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

### Costs of Compliance

We estimate that this AD affects 234 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection | Up to 320 hours | $85 | $0 | Up to $27,200 | 234 | Up to $6,364,800 |

### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII,

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

**Regulatory Findings**

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2011–02–05 The Boeing Company:** Amendment 39–16578; Docket No. FAA–2010–0677; Directorate Identifier 2010–NM–075–AD.

**Effective Date**

(a) This AD is effective March 1, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 727–53A0233, dated February 19, 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 skin lap joints, butt joints, around external repairs and external features such as antennas, and at locations where external decals had been cut. The Federal Aviation Administration is issuing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin and cause rapid 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 paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010, except as provided in paragraphs (h) and (i) of this AD, do detailed inspections for scribe lines of skin lap joints, skin butt joints, around external approved repairs, external features, and fairings, and at locations where external decals may have been cut, and do all applicable related investigative and corrective actions at the times specified in the service bulletin, by accomplishing all actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010, except as provided by paragraph (j) of this AD.

**Note 1:** The inspection exemptions noted in paragraph 1.E. of Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010, apply to this AD.

**Exceptions to Service Bulletin Specifications**

(h) Where Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010, specifies a compliance time after ''the original issue date on this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Where Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010, specifies to calculate the flight-cycle time for an airplane ''as of the original 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.

(j) Where Boeing Alert Service Bulletin 727–53A0233, dated February 19, 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**

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD: Submit a report of positive crack findings of the inspections required by paragraph (g) of this AD. Operators may use the reporting form contained in Appendixes B and C, as applicable, of Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010. 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 found, 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.

**Paperwork Reduction Act Burden Statement**

(l) A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

**Alternative Methods of Compliance (AMOCs)**

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Attn: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

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

inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

**Related Information**

(n) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

**Material Incorporated by Reference**

(o) You must use Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 727–53A0233, dated February 19, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this 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*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on January 5, 2011.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–464 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0796; Directorate Identifier 2010–NM–007–AD; Amendment 39–16579; AD 2011–02–06]**

## RIN 2120–AA64

## Airworthiness Directives; The Boeing Company Model 767–300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitive inspections for cracks in the fuselage skin and backup structure at the lower VHF antenna cutout at station 1197 + 99 between stringers 39 left and 39 right, and corrective actions if necessary. Certain repairs terminate certain inspection requirements. This AD was prompted by reports of cracking found in the section 46 fuselage lower skin around the periphery of the VHF antenna baseplate at station 1197 + 99. We are issuing this AD to detect and correct fatigue cracks in the fuselage skin and internal backup structure, which could result in rapid decompression of the airplane.

**DATES:** This AD is effective March 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2011.

**ADDRESSES:** For service information identified in this 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (*phone:* 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6577; fax 425–917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM was published in the **Federal Register** on August 11, 2010 (75 FR 48623). That NPRM proposed to require repetitive inspections for cracks in the fuselage skin and backup structure at the lower VHF antenna cutout at station 1197 + 99 between stringers 39L and 39R, and corrective actions if necessary. Certain repairs proposed by that NPRM would terminate certain inspection requirements.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to the comment.

### Request To Clarify Compliance Time

Boeing requested that we change the NPRM to explain that the internal detailed inspection may be deferred up to 6,000 flight cycles after the effective date of the AD if no fuselage skin cracks are found during the external detailed inspection. Paragraph (g) of the NPRM referred to Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009 (''the service bulletin''), for the proposed compliance times for the external and internal detailed inspections. The Relevant Service Information section in the NPRM preamble explained that, if no cracks were found during the external detailed inspection, the internal detailed inspection may be deferred ''for an additional 6,000 flight cycles.'' Boeing stated, however, that this service bulletin instead allows deferral of the internal detailed inspection for a maximum of 6,000 flight cycles after the date on the service bulletin.

We partially agree. We agree that Boeing's suggested change reflects the intent of this service bulletin. Boeing published this revision in Service Bulletin Information Notice 767–53–0207 IN 01, dated July 8, 2010, to clarify a compliance time. We have added new paragraphs (h) and (i) in this final rule to explain the exceptions to this service bulletin's compliance times and to incorporate the information in the information notice. We have re-identified subsequent paragraphs accordingly. We do not agree to correct this information in the Relevant Service Information section of the NPRM because that section is not repeated in a final rule.

**Conclusion**

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

**Costs of Compliance**

We estimate that this AD affects 93 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Inspections | 3 | $85 | $255 | 93 | $23,715 |

**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**

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2011–02–06 The Boeing Company:** Amendment 39–16579; Docket No. FAA–2010–0796; Directorate Identifier 2010–NM–007–AD.

**Effective Date**

(a) This AD is effective March 1, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to The Boeing Company Model 767–300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009.

**Subject**

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

**Unsafe Condition**

(e) This AD was prompted by reports of cracking found in the section 46 fuselage lower skin around the periphery of the very high frequency (VHF) antenna baseplate at station 1197 + 99. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracks in the fuselage skin and internal backup structure, which could result in rapid 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.

**Inspections**

(g) Inspect for cracks in the fuselage skin and backup structure at the lower VHF antenna cutout at station 1197 + 99, between stringers 39L and 39R, by doing an external detailed inspection, with the antenna removed, of the fuselage structure at the lower aft VHF antenna cutout, and an internal detailed inspection of the backup structure. Do the inspections in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009. Do the inspections at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009, except as required by paragraphs (h) and (i) of this AD.

(1) If no crack is found, repeat the external detailed inspection, without removing the antenna, at intervals not to exceed 3,000 flight cycles.

(2) If any crack is found in the fuselage skin, repair before further flight, in accordance with Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009. Accomplishment of this repair terminates the repetitive external detailed inspections of the fuselage skin required by this AD.

(3) If any crack is found in the backup structure, before further flight, repair or replace the cracked part(s), in accordance with Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009.

**Exceptions to Service Bulletin Specifications**

(h) Where Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified time after the effective date of this AD.

(i) The internal detailed inspection specified in Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009, and required by paragraph (g) of this AD must be done at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Before the accumulation of 25,000 total flight cycles.

(2) At the applicable time specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD.

(i) If any fuselage skin crack is found during the external detailed inspection required by paragraph (g) of this AD: Within 3,000 flight cycles after the effective date of this AD.

(ii) If no fuselage skin crack is found during the external detailed inspection required by paragraph (g) of this AD: Within 6,000 flight cycles after the effective date of this AD.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

**Related Information**

(k) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6577; *fax:* 425–917–6590; *e-mail: berhane.alazar@faa.gov.*

**Material Incorporated by Reference**

(l) You must use Boeing Special Attention Service Bulletin 767–53–0207, dated December 17, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this 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.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on January 6, 2011.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–462 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0053; Directorate Identifier 2010–CE–073–AD; Amendment 39–16581; AD 2011–02–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Aircraft Industries a.s. Model L 23 Super Blanik Sailplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

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

Cracks were reported on the rear horizontal stabilizer bracket of two L 23 SUPER–BLANIK sailplanes.

This condition, if not corrected, could result in no longer retaining the horizontal stabilizer in place and consequent loss of control of the aeroplane.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective February 14, 2011.

On February 14, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by March 11, 2011.

**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 AD, contact Aircraft Industries, a.s.-Na zahonech 1177, 686 04 Kunovice, Czech Republic; *telephone:* +420 572 817 660; *fax:* +420 572 816 112; *e-mail: ots@let.cz*; Internet: *http://www.let.cz/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

**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 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:** Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4165; *fax:* (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent

for the Member States of the European Community, has issued AD No.: 2010–0274–E, dated December 22, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks were reported on the rear horizontal stabilizer bracket of two L 23 SUPER–BLANIK sailplanes.
>
> This condition, if not corrected, could result in no longer retaining the horizontal stabilizer in place and consequent loss of control of the aeroplane.
>
> For the reasons described above, this AD requires immediate inspection of the bracket located at the top of the fin (drawing No. A 730 420 N) and its replacement depending on findings. As a result of the on-going investigation further mandatory terminating action and/or repetitive inspection is likely to follow.

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

**Relevant Service Information**

Aircraft Industries a.s. has issued LET Aircraft Industries Mandatory Bulletin No.: L23/053a, dated December 14, 2010; and LET Aircraft Industries Information Bulletin No.: L23/054b, dated December 20, 2010. 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 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 issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks were reported on the rear horizontal stabilizer bracket of two L 23 Super Blanik sailplanes. This condition, if not corrected, could result in no longer retaining the horizontal stabilizer in place and consequent loss of control. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0053; Directorate Identifier 2010–CE–073–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2011–02–08 Aircraft Industries a.s.:** Amendment 39–16581; Docket No. FAA–2011–0053; Directorate Identifier 2010–CE–073–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective February 14, 2011.

**Affected ADs**

(b) None

**Applicability**

(c) This AD applies to Aircraft Industries a.s. Model L 23 Super Blanik sailplanes, all serial numbers, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

**Reason**

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

Cracks were reported on the rear horizontal stabilizer bracket of two L 23 SUPER–BLANIK sailplanes.

This condition, if not corrected, could result in no longer retaining the horizontal stabilizer in place and consequent loss of control of the aeroplane.

For the reasons described above, this AD requires immediate inspection of the bracket located at the top of the fin (drawing No. A 730 420 N) and its replacement depending on findings. As a result of the on-going investigation further mandatory terminating action and/or repetitive inspection is likely to follow.

**Actions and Compliance**

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

(1) Before further flight after the effective date of this AD, inspect the rear horizontal stabilizer bracket critical areas (hinge welding areas) for cracks following LET Aircraft Industries Mandatory Bulletin No.: L23/053a, dated December 14, 2010.

(2) If during the inspection required in paragraph (f)(1) of this AD a crack is found, before further flight, replace the bracket following LET Aircraft Industries Information Bulletin No.: L23/054b, dated December 20, 2010.

(3) Within 10 days after the replacement required in paragraph (f)(2) of this AD, do the following actions:

(i) Send the damaged bracket to the address listed in paragraph (i)(2) of this AD.

(ii) Send a report to the address listed in paragraph (i)(2) of this AD containing the following information: Registration mark, serial number, total hours time-in-service, and number of take-offs (if available) since the sailplane has been in operation.

**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:* Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4165; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

**Related Information**

(h) Refer to European Aviation Safety Agency (EASA) AD No.: 2010–0274–E, dated December 22, 2010; LET Aircraft Industries Mandatory Bulletin No.: L23/053a, dated December 14, 2010; and LET Aircraft Industries Information Bulletin No.: L23/054b, dated December 20, 2010; for related information.

**Material Incorporated by Reference**

(i) You must use LET Aircraft Industries Mandatory Bulletin No.: L23/053a, dated December 14, 2010; and LET Aircraft Industries Information Bulletin No.: L23/054b, dated December 20, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Aircraft Industries, a.s.-Na zahonech 1177, 686 04 Kunovice, Czech Republic; *telephone:* +420 572 817 660; *fax:* +420 572 816 112; *e-mail: ots@let.cz;* Internet: *http://www.let.cz/.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on January 12, 2011.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–1137 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Parts 738, 740, 742, and 744

**[Docket No. 101222617–0617–01]**

**RIN 0694–AF10**

## U.S.-India Bilateral Understanding: Revisions to U.S. Export and Reexport Controls Under the Export Administration Regulations

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement several components of the bilateral understanding between the United States and India announced by President Obama and India's Prime Minister Singh on November 8, 2010. This is the first in a series of rules implementing the President's and Prime Minister's commitment to work together to strengthen the global nonproliferation and export control framework and further transform our bilateral export control cooperation to realize the full potential of the strategic partnership between the two countries. The two leaders outlined mutual steps to implement an export control reform program. On the part of the United States, these steps include removing India's defense and space-related entities from the Entity List (Supplement No. 4 to part 744 of the EAR) and realigning U.S. export licensing policy toward India by removing India from three country groups in the EAR and adding it to one country group. This rule also makes conforming changes to the EAR consistent with these steps. These reforms reflect India's nonproliferation record and commitment to abide by multilateral export control standards.

**DATES:** This rule is effective January 25, 2011. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AF10, by any of the following methods:

*E-mail: publiccomments@bis.doc.gov* Include ''RIN 0694–AF10'' in the subject line of the message.

*Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

*Mail or Hand Delivery/Courier:* Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AF10.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694–AF10)—all comments on the latter should be submitted by one of the three methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding foreign policy and nonproliferation controls contact Alex Lopes, Director, Office of Nonproliferation and Treaty Compliance, Export Administration, Bureau of Industry and Security, Phone: (202) 482–3825, E-mail: *ALopes@bis.doc.gov*.

For questions regarding the Entity List contact Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, E-mail: *ERC@bis.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

*U.S.-India Bilateral Understanding: Revisions to U.S. Export and Reexport Controls Under the Export Administration Regulations*

On November 8, 2010, President Obama and Prime Minister Singh of India issued a Joint Statement announcing that they had resolved to expand and strengthen the India-U.S. global strategic partnership. (U.S.-India Joint Statement, November 8, 2010). The Joint Statement covers a range of issues, activities, and programs that reflect the vision of the President and of India's Prime Minister. In the Joint Statement, the leaders reaffirmed that the U.S.-India strategic partnership is indispensable for global stability and prosperity and reaffirmed existing assurances regarding procurement and use by India of items subject to the Export Administration Regulations (EAR). In the Joint Statement, recognizing that India and the United States should play a leadership role in promoting global nonproliferation objectives and their desire to expand high technology cooperation and trade, the two leaders committed to work together to strengthen the global export control framework and further transform bilateral export control regulations and policies, and decided to take mutual steps to expand U.S.-India cooperation in civil space, defense and other high-technology sectors. These steps include removal of Indian defense and space-related entities from the Entity List, and realignment of India in U.S. export control regulations. Additionally, the Joint Statement announced that the United States ''intends to support India's full membership in the four multilateral export control regimes (Nuclear Suppliers Group, Missile Technology Control Regime, Australia Group, and Wassenaar Arrangement) in a phased manner, and to consult with regime members to encourage the evolution of regime membership criteria,'' while maintaining these regimes' core principles, ''as the Government of India takes steps towards the full adoption of the regimes' export control requirements to reflect its prospective membership, with both processes moving forward together.''

In this rule, BIS begins implementation of those reforms by revising certain export and reexport controls for India, including the removal of nine Indian entities from the Entity List. In addition, BIS amends the EAR to remove India from Country Groups D:2, D:3, and D:4 and to add India to Country Group A:2. In this rule, BIS also makes conforming changes in the EAR as part of these initial steps to implement the export control reform program outlined in the November 8, 2010 U.S.-India bilateral understanding. These changes are in the national interest of the United States.

*Specific Amendments to the EAR Implementing U.S.-India Bilateral Understanding*

Part 744

In this rule, BIS amends the EAR to remove the following entities from Supplement No. 4 to part 744 of the EAR, i.e., the Entity List:

- Bharat Dynamics Limited (BDL).
- All subordinates of India's Defense Research and Development Organization (DRDO) identified on the Entity List immediately prior to the effective date of this rule, namely:

—Armament Research and Development Establishment (ARDE);
—Defense Research and Development Lab (DRDL);
—Missile Research and Development Complex; and
—Solid State Physics Laboratory.

- All Indian Space Research Organization (ISRO) subordinate entities identified on the Entity List immediately prior to the effective date of this rule, namely:

—Liquid Propulsion Systems Center;
—Solid Propellant Space Booster Plant (SPROB);
—Sriharikota Space Center (SHAR); and
—Vikram Sarabhai Space Center (VSSC).

The removal of these nine Indian entities from the Entity List eliminates the existing license requirements in the Entity List, Supplement No. 4 to part 744, for exports, reexports, and transfers (in-country), to these entities. The removal of these entities from the Entity List does not, however, relieve persons of other obligations in part 744 of the EAR or under other applicable parts of the EAR. For example, neither the removal of a person from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligation to adhere to General Prohibition 5 in section 736.2(b)(5) of the EAR, which provides that ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Persons must also refrain from undertaking transfers (in-country) to an end-user or end-use that is prohibited by any provision of part 744. Additionally, such removals do not relieve persons of their obligation to apply for export, reexport, or transfer (in-country) licenses required by other provisions of the EAR. BIS strongly urges persons to review and abide by Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when involved in transactions that are subject to the EAR.

Parts 738 and 740

In this rule, BIS also removes India from Country Groups D:2, D:3, and D:4 to Supplement No. 1 to part 740 of the EAR. These Country Groups list countries with certain restrictions on end-uses for nuclear nonproliferation (D:2), chemical & biological (D:3), and missile technology (D:4) reasons under the EAR. This rule also adds India to Country Group A:2 to Supplement No. 1 to part 740 of the EAR, makes License Exception (BAG) (section 740.14(d) of the EAR) available for exports and

reexports of unaccompanied baggage to India, and makes India an eligible destination for reexports under License Exception Additional Permissive Reexports (APR) (section 740.16(a) of the EAR).

*Country Group D:2:* India's removal from Country Group D:2 will not change licensing policy toward India for items controlled for nuclear nonproliferation (NP column 1(NP1), Supplement No. 1 to part 738 (Commerce Country Chart) of the EAR) reasons; a license will still be required for the export of NP1 items to all destinations in India. U.S.-origin items controlled unilaterally for nuclear nonproliferation reasons (NP2) do not require a license for most destinations in India. Prior to publication of this rule, paragraph (a)(2) of section 742.3 of the EAR expressly exempted India from the license requirement for Country Group D:2 countries. India's removal from Country Group D:2 through this rule, however, makes this express exemption unnecessary, and it is therefore being removed. The removal of India from Country Group D:2 also eliminates a license requirement for India under section 744.6 of the EAR for certain U.S. person activities that involve any D:2 country. India, however, remains subject to the ''catch-all'' controls in section 744.2 of the EAR (Restrictions on Certain Nuclear End-uses). Under section 744.2, a person may not export, reexport, or transfer (in-country) an item subject to the EAR to India without a license if, at the time of export, reexport, or transfer (in-country), the person knows that the item will be used, directly or indirectly, in activities described in paragraphs (a)(1), (a)(2), and (a)(3) of section 744.2, i.e., certain nuclear explosive activities, unsafeguarded nuclear activities, or certain safeguarded and unsafeguarded nuclear activities.

*Country Group D:3:* The removal of India from Country Group D:3 means that paragraph (a)(3) of section 742.2 (Proliferation of Chemical and Biological Weapons) of the EAR will not impose a license requirement for exports or reexports to India of medical products, identified in Export Control Classification Number (ECCN) 1C991.d,. Removal of India from Country Group D:3 also means that end users in India are eligible to receive certain items controlled for chemical and biological weapons reasons under special comprehensive licenses (SCLs) described in part 752 of the EAR. Items controlled for chemical and biological weapons reasons are ineligible for export or reexport under a SCL to D:3 destinations.

Furthermore, consistent with the removal of India from Country Group D:3, this rule removes licensing requirements for certain items controlled for chemical and biological weapons proliferation reasons for export or reexport to India, by removing the ''X'' in ''CB Column 3'' for ''India'' in Supplement No. 1 to part 738 (Commerce Country Chart) of the EAR.

*Country Group D:4:* Removal of India from Country Group D:4 eliminates the requirement for export, reexport, and transfers (in-country) licenses for India under paragraphs (a)(1) and (a)(3) of section 744.3 (Restrictions on Certain Rocket Systems and Unmanned Air Vehicles End-Uses). Pursuant to section 744.3(a)(2), a license will still be required for any item if, at the time of the export, reexport, or transfer (in-country), the person knows that the item will be used in India in the design, development, production, or use of rocket systems or unmanned air vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons. The removal of India from Country Group D:4 also eliminates a license requirement for India under section 744.6 of the EAR for certain U.S. person activities that involve a D:4 country.

*Removal of India from Country Groups D:2, D:3, and D:4 and the Availability of License Exceptions:* Removal of India from Country Groups D:2, D:3, and D:4 expands the License Exceptions available for exports and reexports to India. This rule makes available exports and reexports to India of unaccompanied baggage under License Exception Baggage (BAG) section 740.14(d) of the EAR. Such removal also makes India an eligible destination for reexports under License Exception Additional Permissive Reexports (APR) set forth in section 740.16(a) of the EAR.

*Country Group A:2:* This rule also adds India to Country Group A:2, grouping India, as an adherent to the Missile Technology Control Regime (MTCR), with countries that are members of that regime. Under section 742.5 of the EAR, a license is still required for export and reexport of items controlled for missile technology (MT) reasons to all destinations except Canada.

Conforming Amendments

As noted in the discussion of Country Group D:2 above, this rule removes a now unnecessary reference to India from section 742.3(a)(2) of the EAR. This rule also makes a conforming change in section 742.5(d) (Missile Technology Control Regime) of the EAR regarding India acknowledging that India is being included in Country Group A:2 as an MTCR adherent.

Since August 21, 2001, the Export Administration Act of 1979, as amended (Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 12, 2010 (75 FR 50681 (August 16, 2010)), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

**Rulemaking**

**Rulemaking Requirements**

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(a)(1), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 53(a)(1)). This final rule implements aspects of the understanding between the United States and India reflected in the November 8, 2010 U.S.-India Joint Statement and is not discretionary. No other law requires that a notice of

proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility analysis is required and none has been prepared. Notwithstanding these considerations, BIS welcomes public comments and will review them on a continuing basis.

**List of Subjects**

*15 CFR Part 738*

Exports.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 742*

Exports and Terrorism.

*15 CFR Part 744*

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 738, 740, 742 and 744 of the EAR (15 CFR parts 730–774) are amended as follows:

## PART 738 [AMENDED]

■ 1. The authority citation for part 738 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

### Supplement No. 1 To Part 738—[Amended]

■ 2. Supplement No. 1 to Part 738 is amended by removing the ''X'' in ''CB Column 3'' for ''India''.

## PART 740—[AMENDED]

■ 3. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

### Supplement No. 1 To Part 740—[Amended]

■ 4. Supplement No. 1 to part 740 is amended:

■ a. By adding ''India'' to the Country Group A table in alphabetical order and adding and ''X'' for ''India'' in Country Group A:2; and

■ b. By removing the entry ''India'' from the Country Group D table.

## PART 742—[AMENDED]

■ 5. The authority citation for part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

### § 742.3—[Amended]

■ 6. Paragraph (a)(2) of § 742.3 is amended by removing the phrase ''except India''.

■ 7. Paragraph (d) of § 742.5 is revised to read as follows:

### § 742.5 Missile technology.

* * * * *

*(d) Missile Technology Control Regime.* Missile Technology Control Regime (MTCR) members, and India as an MTCR adherent, are listed in Country Group A:2 (see Supplement No. 1 to part 740 of the EAR). Controls on items identified in paragraph (a) of this section are consistent with the list agreed to in the MTCR and included in the MTCR Annex.

## PART 744—[AMENDED]

■ 8. The authority citation for part 744 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

### Supplement No. 4 To Part 744—[Amended]

■ 9. The entry for ''India'' in Supplement No. 4 to part 744 is amended by removing the following entities:

''Bharat Dynamics Limited'';

''The following subordinates of Defense Research and Development Organization (DRDO): Armament Research and Development Establishment (ARDE); Defense Research and Development Lab (DRDL), Hyderabad; Missile Research and Development Complex; Solid State Physics Laboratory''; and

''The following Indian Space Research Organization (ISRO) subordinate entities:

Liquid Propulsion Systems Center; Solid Propellant Space Booster Plant (SPROB); Sriharikota Space Center (SHAR); and Vikram Sarabhai Space Center (VSSC), Thiruvananthapuram.''.

Dated: January 20, 2011.

**Eric L. Hirschhorn,**

*Under Secretary for Industry and Security.*

[FR Doc. 2011–1471 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–33–P**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 229 and 230

**[Release Nos. 33–9176, 34–63742; File No. S7–26–10]**

**RIN 3235–AK76**

## Issuer Review of Assets in Offerings of Asset-Backed Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting new requirements in order to implement Section 945 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Act''). We are adopting a new rule under the Securities Act of 1933 to require any issuer registering the offer and sale of an asset-backed security (''ABS'') to perform a review of the assets underlying the ABS. We also are adopting amendments to Item 1111 of Regulation AB that would require an ABS issuer to disclose the nature of its review of the assets and the findings and conclusions of the issuer's review of the assets.

**DATES:** *Effective Date:* March 28, 2011.

*Compliance Date:* Any registered offering of asset-backed securities

commencing with an initial bona fide offer after December 31, 2011, must comply with the new rules and forms.

**FOR FURTHER INFORMATION CONTACT:** Eduardo Aleman, Special Counsel, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Item 1111 [1] of Regulation AB [2] (a subpart of Regulation S–K). We also are adopting Rule 193 [3] under the Securities Act of 1933 [4] (the ''Securities Act'').

## I. Background and Overview

On October 13, 2010, we proposed new requirements in order to implement Section 945 and a portion of Section 932 of the Dodd-Frank Act.[5] As discussed in the Proposing Release, Section 945 of the Act amends Section 7 of the Securities Act to require the Commission to issue rules relating to the registration statement required to be filed by an issuer of ABS. Pursuant to new Section 7(d), the Commission must issue rules to require that an issuer of an ABS perform a review of the assets underlying the ABS, and disclose the nature of such review. Section 945 of the Act reflects the testimony provided to Congress that due diligence practices in ABS offerings had eroded significantly.[6] We also proposed new requirements relating to the disclosure of third-party findings and conclusions in ABS transactions in order to implement Section 15E(s)(4)(A) of the Exchange Act, as added by Section 932 of the Act. We received over 50 comment letters on the Proposing Release.[7]

As discussed below, after consideration of the comments received on the proposed amendments, we are adopting the proposed amendments to implement Section 7(d) of the Securities Act. We have revised the final rules from the proposal to establish a new minimum standard for the required review. We are postponing consideration of rules to implement Section 15E(s)(4)(A) of the Exchange Act, which requires issuers or underwriters of any asset-backed security to make publicly available the findings and conclusions of any third-party due diligence report the issuer or underwriter obtains, until a later date when we adopt rules to implement the rest of Section 15(E)(s)(4), which we anticipate proposing this year. We are persuaded by the suggestion by several commentators that new Exchange Act Section 15E(s)(4) should be read as a whole, and that we should postpone implementation of 15E(s)(4)(A) until the Commission implements the rest of Section 15E.[8]

## II. Final Rules

### *A. Scope of Rule 193*

#### 1. Proposed Amendments

We proposed new Rule 193 under the Securities Act to require issuers of ABS to perform a review of the assets underlying registered ABS offerings.[9] This rule would implement Securities Act Section 7(d)(1),[10] as added by Section 945 of the Act. As proposed, Rule 193 would require an issuer to perform a review of the assets underlying an ABS in a transaction that the issuer registers under the Securities Act.

#### 2. Comments on the Proposed Amendments—Scope of Rule 193

With respect to the applicability of the proposed rule, some commentators agreed that the rule should apply only to registered offerings of ABS.[11] Some commentators recommended the review requirement be extended to also apply to unregistered offerings and predicted that unless the rule applies to unregistered offerings, abusive practices are likely to migrate into the market for unregistered offerings.[12] One such commentator supported the approach in the Proposing Release's request for comment conditioning the Commission's safe harbors from registration on a requirement that the underlying transaction agreements include a representation that the issuer performed an asset review that complies with Rule 193.[13] Three commentators expressed concern with such a requirement.[14] One commentator sought clarification that the issuer may rely on a review performed by an affiliated originator.[15]

#### 3. Final Rule—Scope of Rule 193

Consistent with the proposal, final Rule 193 requires that the asset review be conducted by the issuer of the ABS.[16] The issuer, for purposes of this rule, is the depositor or sponsor of the securitization. A sponsor typically initiates a securitization transaction by selling or pledging to a specially created issuing entity a group of financial assets that the sponsor either has originated itself or has purchased in the secondary market. In some instances, the transfer of assets is a two-step process: The financial assets are transferred by the sponsor first to an intermediate entity, the depositor or the issuer, and then the depositor transfers the assets to the issuing entity for the particular asset-backed transaction. The issuing entity is typically a statutory trust.[17] In cases

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[1] 17 CFR 229.1111.

[2] 17 CFR 229.1100 through 17 CFR 229.1123.

[3] 17 CFR 230.193.

[4] 15 U.S.C. 77a *et seq.*

[5] *Issuer Review of Assets in Offerings of Asset-Backed Securities,* Release No. 33–9150 (Oct. 13, 2010) [75 FR 64182] (''Proposing Release'').

[6] *See* S. Rep. No. 111–176, at 133 (2010) (''Senate Report'').

[7] The comments on the Proposing Release are available at *http://www.sec.gov/comments/s7-26-10/s72610.shtml.*

[8] *See* comment letters from American Bar Association (''ABA''); National Association of Bond Lawyers (''NABL'').

[9] The requirement to perform a review should not be confused with, and is not intended to change, the due diligence defense against liability under Securities Act Section 11 [15 U.S.C. 77k] or the reasonable care defense against liability under Securities Act Section 12(a)(2) [15 U.S.C. 77*l*(a)(2)]. Our rule is designed to require a review of the underlying assets by the issuer and to provide disclosure of the nature, findings and conclusions of such review.

[10] 15 U.S.C. 77g(d)(1).

[11] *See* comment letters from ABA; Securities Industry and Financial Markets Association (''SIFMA'').

[12] *See* comment letters from Center for Responsible Lending (''CRL''); Senator Levin, Permanent Subcommittee on Investigations, United States Senate Committee on Homeland Security and Governmental Affairs (''Levin''); Consumer Federation of America (''Consumer Federation''); Christopher Chuff.

[13] *See* comment letter from Consumer Federation.

[14] *See* comment letters from ABA; American Financial Services Association (''AFSA''); SIFMA.

[15] *See* comment letter from SIFMA. Another commentator noted that the relationship between the issuer and originator is an important consideration in determining the appropriateness of a review, and suggested that in so-called ''aggregator'' transactions, where the issuer is unaffiliated with the originator of the assets, the review should be more fulsome. *See* comment letter from ABA.

[16] Under Securities Act Rule 191 (17 CFR 230.191), the depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the ''issuer'' for purposes of the asset-backed securities of that issuing entity. ''Depositor'' means the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity. *See* Item 1101 of Regulation AB (17 CFR 229.1101). For asset-backed securities transactions where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For asset-backed securities transactions where the person transferring or selling the pool assets is itself a trust, the depositor of the issuing entity is the depositor of that trust. *See id.* As defined in Item 1101 of Regulation AB, the ''sponsor'' means the person who organizes and initiates an ABS transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. *See id.*

[17] *See Asset-Backed Securities,* Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506] (''2004 Regulation AB Adopting Release'') at Section III.B.3. The issuing entity is designed to be a passive entity, and in order to meet the definition of ABS issuer in Regulation AB its activities must be limited to passively owning or holding the pool of assets, issuing the ABS supported or serviced by those assets, and other activities reasonably incidental thereto.

where the originator and sponsor may be different, including in transactions involving a so-called ''aggregator,'' our final rule, consistent with the proposal, provides that the review may be performed by the sponsor, but a review performed by an unaffiliated originator will not satisfy Rule 193. An unaffiliated originator may have different interests in the securitization, especially if the securitization involves many originators where each originator may have contributed a very small part of the assets in the entire pool, and may have differing approaches to the review.[18]

As discussed in the Proposing Release, Section 7(d)(1) relates to an asset-backed security, as defined in new Section 3(a)(77) of the Exchange Act.[19] This new statutory definition (''Exchange Act-ABS'') is broader than the definition of ''asset-backed security'' in Regulation AB [20] and includes securities typically offered and sold in private transactions. Although the Exchange Act-ABS term is used in Section 7(d)(1), we have concluded that the review requirements mandated by Section 7(d)(1) are limited to registered offerings of ABS because Section 7(d)(1) requires the Commission to issue rules ''relating to the registration statement.'' Therefore, the rule we adopt today that requires an ABS issuer to perform a review of the assets applies to issuers of ABS in registered offerings and not issuers of ABS in unregistered offerings.

As noted above, in the Proposing Release we asked whether, even though Section 7(d)(1) does not extend to unregistered offerings, we should condition reliance on the Securities Act safe harbors from registration on a requirement that the underlying transaction agreement for the ABS contain a representation that the issuer performed a review that complies with Rule 193, or, alternatively, that the issuer perform a Rule 193 review. Given the mixed comments on this question and our outstanding proposals from April 2010 related to offerings under the safe harbors from registration,[21] we are not adopting at this time a separate requirement to condition the Commission's safe harbors for an exemption from registration on a requirement that the issuer conduct a review of the assets. As we noted in the 2010 ABS Proposing Release, we have concerns about investor protection in the exempt ABS markets.[22] While we continue to have these concerns, at this point we believe a comprehensive approach to the Commission's safe harbors for an exemption from registration would better serve investors and provide more certainty to issuers than an incremental approach. In the future, we may determine that discrete amendments to the safe harbors addressing ABS matters are appropriate.

*B. Standard of Review of Assets by Issuers of ABS*

1. Proposed Amendments

Proposed Rule 193 provided that an issuer would be required to conduct a review of the assets and disclose the findings and conclusions of the review. Proposed Rule 193 did not specify the level or type of review an issuer would be required to perform, or require that a review be designed in any particular manner. However, the Proposing Release included detailed requests for comment on whether we should set a minimum review standard, including possible standards that could be included in a final rule. In particular, the Proposing Release sought comment on a possible review standard that would require issuers to perform a review that, at a minimum, must be designed to provide reasonable assurance that the disclosure in the prospectus regarding the pool assets is accurate in all material respects. We also sought comment on whether the rule should mandate that the review should not only be designed, but also effected, to provide reasonable assurance that the prospectus disclosure was accurate in all material respects.

2. Comments on the Proposed Amendments—Standard of Review

Comments on the proposed review requirement, including the absence of a minimum review standard, were varied. Some commentators responded that the review requirement, as proposed, did not address the problems that Section 945 of the Act sought to address and suggested that the Commission set a minimum level of review.[23] One commentator recommended that ABS issuers be required to conduct reviews that are both ''designed and effected'' with sufficient scale and scope to discover assets that violate applicable law or standards as set forth in the prospectus.[24] This commentator explained that this would go beyond providing ''reasonable assurance that the disclosure in the prospectus is accurate in all material respects.'' One commentator cautioned that the rule, as proposed, would create a perverse incentive to decrease due diligence reviews even further in order to decrease the likelihood that they reveal problems that would have to be disclosed to investors.[25]

Some commentators suggested possible alternative review standards that encompass other aspects of the assets, instead of disclosure. Some commentators urged the Commission to require a review that assesses the actual quality of the underwriting of the assets [26] and exclude the type of review of assets that amounts to a mere comparison or ''comforting'' of data that relates to the prospectus disclosure. These commentators stated that in light of the existing liability framework under the federal securities laws, it is not necessary for the Commission to require that issuers conduct or disclose any particular review that merely verifies the accuracy of the disclosure in the prospectus.[27] Some commentators believed that the type of review that should be disclosed under Rule 193 is a review that relates to the underwriting of the assets [28] or quality of the underlying assets (*e.g.,* credit quality).[29]

[18] In the case of so-called aggregators, the sponsor acquires loans from many other unaffiliated sellers before securitization.

[19] 15 U.S.C. 78c(a)(77). This definition was added by Section 941(a) of the Act.

[20] *See* Item 1101(c)(1) of Regulation AB [17 CFR 229.1101(c)(1)].

[21] *See Asset-Backed Securities,* Release No. 33–9117 (April 7, 2010) [75 FR 23328] (the ''2010 ABS Proposing Release''). In the 2010 ABS Proposing Release we proposed requiring that the underlying transaction agreement in a transaction relying on certain Commission safe harbors for an exemption from registration under the Securities Act contain a provision requiring the issuer to provide to any initial purchaser, security holder, and designated prospective purchaser the same information as would be required in a registered transaction. In addition, the Commission solicited comment concerning whether safe harbors from registration should not be available for offerings of structured finance products and whether any restrictions should be imposed on private offerings of asset-backed securities.

[22] *See id.* at 23394.

[23] *See* comment letters from Chris Barnard (''Barnard''); Consumer Federation (supporting a principles-based review standard such as the ''reasonable assurance'' standard discussed in the Proposing Release's request for comment, and suggesting that where initial reviews uncover discrepancies, further reviews sufficient to uncover the extent of the problem should be conducted); CRL; Levin; American Society of Appraisers, American Society of Farm Managers and Rural Appraisals, National Association of Independent Fee Appraisers (collectively, ''Appraisers''); Clayton Holdings, LLC (''Clayton''); Americans for Financial Reform (''AFR''); Fitch, Inc. (''Fitch''). *See also* comment letter from ABA (supporting Rule 193 as proposed, but agreeing that the ''reasonable assurance'' approach discussed in the Proposing Release's request for comment is workable if the Commission were to adopt a minimum level of review).

[24] *See* comment letter from CRL.

[25] *See* comment letter from Consumer Federation.

[26] *See* comment letters from ASF; SIFMA.

[27] *See* comment letters from ASF; SIFMA.

[28] *See* comment letters from ASF; SIFMA.

[29] *See* comment letter from BDO USA, LLP.

Other commentators suggested that at a minimum, the review should include, for example, verifying the accuracy of the loan data and related information, determining whether the assets complied with the underwriting guidelines, determining compliance with the originator's property valuation guidelines, and determining whether the loans were originated in compliance with applicable laws.[30]

Other commentators, in support of a minimum review standard, suggested that the issuer's review should include disclosure of key indicators of loan quality (*e.g.,* weighted average FICO scores, loan-to-value ratios, borrower debt-to-income ratios, and the absence of data suggesting loan fraud) [31] and a minimum sample size requirement.[32] Some commentators suggested that this should include a statistically valid sample of assets whose analysis could be extrapolated to the entire asset pool.[33] Two of these commentators argued that such a requirement would ensure a level playing field and that no issuer gains a competitive cost advantage by using smaller sample sizes.[34] One commentator suggested that the Commission consider the minimum sample sizes set forth by the various rating agencies,[35] while another noted that sampling should be conducted in a manner appropriate to provide confidence that a representative portion of the pool has been examined (*e.g.,* a sample size could be computed using a 95% confidence level and a 5% confidence interval).[36]

On the other hand, some commentators supported the Commission's proposal, which did not prescribe a minimum level of review.[37] One commentator opposed the ''reasonable assurance'' standard in the Proposing Release's request for comment and argued that the standard is inappropriate and unnecessary to address the intent of the Act or to improve disclosure because the new requirements mandated by the Act should address a review of the assets, as opposed to a review of the disclosure about the assets.[38] This commentator cautioned that a ''reasonable assurance'' standard would require issuers to describe what they did to get comfortable that they met their disclosure obligations, and expose them to liability for failing to have used procedures that provided such ''reasonable assurance'' or for not having accurately described the nature of the procedures and their findings and conclusions, even if there was no material error or omission in the prospectus about the pool assets.[39]

One commentator requested confirmation that Rule 193 addresses a review of assets in connection with the preparation of the securitization, rather than a review performed in connection with origination of a securitized asset.[40] This commentator explained that in the context of CMBS transactions, the sponsor of the securitization is often also the originator (or an affiliate of the originator) of the assets being transferred into a securitization, and that it would be unusual for any extra level of diligence to be performed on the assets themselves in connection with the securitization since the sponsor previously underwrote the assets and is familiar with the assets.

3. Final Rule—Issuer Review Requirement

After considering the comments, we are adopting Rule 193 with a minimum review standard. We agree with commentators who suggested that Rule 193 should require a minimum level of review to implement the directive in Section 7(d), as added by Section 945 of the Act. Absent a minimum standard of review, we are concerned that issuers could satisfy new Rule 193 with a review that was not designed or carried out in a way that would address the concerns that led to the enactment of section 7(d)(1)—that due diligence be ''re-introduced'' into the offering process.[41] We also believe a minimum standard of review is appropriate in light of Congress's direction that issuers ''of an asset-backed security * * * perform a due diligence analysis of the assets.'' [42] Indeed, permitting issuers to satisfy the statutory requirement with such a review potentially could undercut the statutory purpose by erroneously suggesting that due diligence was conducted.

While we have concluded that a minimum review standard is appropriate for our final rule, we believe a flexible, principles-based standard that would be workable across a wide variety of asset classes and issuers would best accomplish our objectives. Consequently, we are adopting Rule 193 modified from the proposal to require an issuer to perform a review of the assets underlying an ABS in a transaction that will be registered under the Securities Act that, at a minimum, must be designed and effected to provide reasonable assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects.[43]

We note that the minimum standard that we are adopting is similar to the standard many companies use in designing and maintaining disclosure controls and procedures required under Exchange Act Rule 13a–15.[44] Our rules, which have applied to reporting companies for many years, generally ''require an issuer to maintain disclosure controls and procedures to provide reasonable assurance that the issuer is able to record, process, summarize and report the information required in the issuer's Exchange Act reports'' within appropriate time frames.[45] We believe that many issuers and their advisers are familiar with this type of standard.[46]

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[30] *See* comment letters from Clayton; CRL.

[31] *See* comment letter from Levin.

[32] *See* comment letters from ABA; Clayton; Fitch; Levin; SIFMA.

[33] *See* comment letters from Clayton; Fitch; Levin; SIFMA.

[34] *See* comment letters from Clayton; Levin.

[35] *See* comment letter from Clayton.

[36] *See* comment letter from Fitch.

[37] *See, e.g.,* comment letters from ABA; American Bankers Association Securities Association (''ABASA''); Association for Financial Markets in Europe (''AFME''); Commercial Real Estate Finance Council (''CRE Finance Council''); and Mortgage Bankers Association (''MBA'').

[38] *See* comment letter from ASF.

[39] *See* comment letter from ASF (noting that the scope of a ''reasonable assurance'' standard is overly broad considering the substantial amount of disclosure regarding the pool assets that is contained in the prospectus including, in addition to numerical information about the assets, narrative disclosure about such matters as the pool assets generally, risk factors relevant to the pool assets, servicing of the pool assets, and legal aspects of the pool assets).

[40] *See* comment letter from CRE Finance Council.

[41] *See* Senate Report, at 133 (quoting Senate committee testimony by Professor John Coffee). We note that some commentators supported the standard described in the Proposing Release's request for comment. *See* comment letters from Consumer Federation; ABA (suggesting that this approach is workable if the Commission were to adopt a minimum level of review, though supporting Rule 193 as proposed).

[42] *Id.*

[43] Thus, for example, if the prospectus disclosed that the loans are limited to borrowers with a specified minimum credit score, or certain income level, the review, as designed and effected, would be required to provide reasonable assurance that the loans in the pool met this criterion.

[44] 17 CFR 240.13a–15.

[45] *See Management's Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports,* Release No. 33–8238 (June 5, 2003). *See also Certification of Disclosure in Companies' Quarterly and Annual Reports,* Release No. 34–8124 (June 14, 2002) (''Certification in Periodic Reports Release''). ABS issuers must provide in Form 10–K an assessment by each party participating in the servicing function regarding its compliance with specified servicing criteria set forth in Item 1122 of Regulation AB. *See* 17 CFR 229.1122. A registered public accounting firm must issue an attestation report on such party's assessment of compliance. *See id.*

[46] Although ABS issuers are not subject to Rule 13a–15, ABS issuers that also issue corporate securities are familiar with it. We previously have

Rule 193 does not specify the particular type of review an issuer is required to perform.[47] We expect that the type of review of the assets an issuer performs may vary depending on the circumstances. For example, the nature of review may vary among different asset classes. While Rule 193 does not require a particular type of review, as described below, disclosure describing the type of review is required. The ''reasonable assurance'' standard is similar to language in the Foreign Corrupt Practices Act of 1977.[48] We recognize that while ''reasonableness'' is an objective standard, there is a range of judgments that an issuer might make as to what will provide ''reasonable assurance.'' [49] Thus, the term ''reasonable assurance'' in Rule 193 does not imply a single methodology, but encompasses the full range of reviews an issuer may perform to ensure that its review is designed and effected to provide reasonable assurance that the prospectus disclosure regarding the pool assets is accurate in all material respects.

We continue to believe that the nature of review may vary depending on numerous circumstances and factors which could include, for example, the nature of the assets being securitized and the degree of continuing involvement by the sponsor.[50] We note the suggestion by several commentators that sampling should be permitted.[51] While we agree that sampling may be appropriate depending on the facts and circumstances, we believe that whether sampling is sufficient to satisfy the ''reasonable assurance'' standard in Rule 193 will depend on a variety of factors, such as the type of ABS being offered. For example, in offerings of residential mortgage-backed securities (''RMBS''), where the asset pool consists of a large group of loans, it may be appropriate, depending on all the facts, to review a sample of loans large enough to be representative of the pool, and then conduct further review if the initial review indicates that further review is warranted in order to provide reasonable assurance that disclosure is accurate in all material respects. By contrast, for ABS where a significant portion of the cash flow will be derived from a single obligor or a small group of obligors, such as ABS backed by a small number of commercial loans (''CMBS''), it may be appropriate for the review to include every pool asset. Moreover, in ABS transactions where the asset pool composition turns over rapidly because it contains revolving assets, such as credit card receivables or dealer floorplan receivables, a different type of review may be warranted than in ABS transactions involving term receivables, such as mortgage or auto loans. We are not adopting a minimum sample size for offerings where sampling may be appropriate for the review as we believe any appropriate sample size must be based on the facts and circumstances. While reviewing a sample of assets may or may not be appropriate under the particular facts, we agree with commentators who suggested that, where a sample of the assets is reviewed, the size of the sample and the criteria used to select the assets sampled should be disclosed. Accordingly, we are adding an instruction noting that this disclosure should be provided as part of the description of the nature of the review, as discussed further below.

We have considered comment letters stating that the required review should relate to the credit quality, or underwriting, of the assets rather than the accuracy of the disclosure in the prospectus. We believe that accuracy of disclosure in the prospectus is an appropriate objective for the required review. The minimum review standard we are adopting will necessarily include credit quality and underwriting of the assets since disclosure about these factors is required in the prospectus, but also will be broader than just a review of the underwriting of the assets. Because an issuer is required under Regulation AB to provide disclosure about material characteristics of the asset pool indicating the quality of the asset pool, under the review requirement we are adopting today, the issuer will be required to review whether the disclosure regarding the asset pool is accurate in all material respects.[52] In addition to credit quality, this will include the disclosure currently required by Item 1111 of Regulation AB. Further, under Item 1111 of Regulation AB, as revised today, prospectus disclosure of the nature of the review is required.

### *C. Third Party Reviews*

#### 1. Proposed Amendments

Proposed Rule 193 would have permitted an issuer to rely on third parties to satisfy its obligations under Rule 193 provided the third party is named in the registration statement and consents to being named as an ''expert'' in accordance with Section 7 of the Securities Act and Rule 436 under the Securities Act.[53]

#### 2. Comments on the Proposed Amendments

Some commentators supported the proposal to permit issuers to rely on third-party firms to conduct the

recognized that, because the information ABS issuers are required to provide differs significantly from that provided by other issuers, and because of the structure of ABS issuers as typically passive pools of assets, the certification requirements should be tailored specifically for ABS issuers. *See Certification in Periodic Reports Release.*

[47] We understand that various levels and types of review may be performed in a securitization. For example, commentators on the 2010 ABS Proposing Release have identified that the type of review conducted by a sponsor of a securitization of sub-prime mortgage loans typically falls into three general categories. First, a credit review examines the sample loans to ascertain whether they have been originated in accordance with the originator's underwriting guidelines. This would include a review of whether the loan characteristics reported by the originator are accurate and whether the credit profile of the loans is acceptable to the sponsor. A second type of review could be a compliance review which examines whether the loans have been originated in compliance with applicable laws, including predatory lending and Truth in Lending statutes. Third, a valuation review entails a review of the accuracy of the property values reported by the originators for the underlying collateral. This could include a review of each original appraisal to assess whether it appeared to comply with the originator's appraisal guidelines, and the appropriateness of the comparables used in the original appraisal process. *See* comment letter from The Commonwealth of Massachusetts Office of the Attorney General (''Massachusetts AG comment letter'') on the 2010 ABS Proposing Release. The comment letters are available at *http://www.sec.gov/comments/s7-08-10/s70810.shtml.*

[48] Title 1 of Pub. L. 95–213 (1977). Exchange Act Section 13(b)(7) defines ''reasonable assurance'' as ''such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.'' 15 U.S.C. 78m(b)(7). We have long been of the view that ''reasonableness'' is not an ''absolute standard of exactitude for corporate records.'' Release No. 34–17500 (Jan. 29, 1981) [46 FR 11544].

[49] *See Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934,* Release No. 34–55929 (June 20, 2007).

[50] We agree with one commentator's view that the review that is required is a review of the assets for purposes of the securitization and not the review conducted to originate the assets.

[51] *See, e.g.,* comment letters from ABA; Fitch; Levin; SIFMA.

[52] We note that the federal securities laws currently require that disclosure in the prospectus not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements not misleading. *See* Securities Act Section 11 [15 U.S.C. 77k] and Securities Act Section 12 [12 U.S.C. 77l]. *See also* Securities Act Section 17 [15 U.S.C. 77q], Exchange Act Section 10(b) [15 U.S.C. 78j] and Rule 10b–5 under the Exchange Act [17 CFR 240.10b–5].

[53] Section 7 of the Securities Act requires the consent of any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement.

required review.[54] One commentator noted that issuers should be responsible for the sufficiency and accuracy of the reviews without regard to whether the review is conducted by a third party.[55] Another commentator recommended that any third-party review be at arm's length.[56] In contrast, another commentator did not believe that an independence requirement was needed because an issuer may perform the review itself and cannot be independent or conflict-free with respect to itself.[57] This commentator reasoned that since an issuer is not required to rely on a third party and could conduct the review itself, there is no greater likelihood that the independence would be impaired.[58]

Some commentators expressed concern that third-party due diligence providers would be considered experts under the Securities Act and asserted that this treatment would be inconsistent with the principles guiding Section 11(a)(4) of the Securities Act.[59] Some commentators predicted that this requirement is likely to result in these providers withdrawing from providing services to transactions where expert liability would attach.[60] One commentator noted that if these third-party due diligence providers are subject to expert liability and they refuse to consent to being named as experts, registered RMBS transactions will become impossible because many NRSROs require that a non-affiliated third party perform a due diligence review in order to rate RMBS.[61] This commentator explained that if issuers are unable to obtain a third-party review because of expert liability they would be unable to obtain a credit rating because of the lack of a third-party review.[62]

Several commentators who expressed concern that third-party due diligence providers would be considered experts under the Securities Act reasoned that due diligence providers are not licensed professionals and are not part of a regulated industry that is governed by a formal professional association.[63] One commentator argued that in light of an issuer's continuing liability under Section 11 for its disclosure related to due diligence, the additional comfort to the Commission and investors as to the accuracy of the diligence results gained by requiring expert liability is outweighed by the loss of diligence firms that will not consent to becoming experts.[64]

3. Final Rule—Third-Party Review

We are adopting, as proposed, a requirement that if an issuer engages a third party for purposes of performing its Rule 193 review, then an issuer may rely on the third-party's review to satisfy its obligations under Rule 193 provided the third party is named in the registration statement and consents to being named as an ''expert'' in accordance with Section 7 of the Securities Act and Rule 436 under the Securities Act. We believe that allowing issuers to contract with a third-party due diligence provider[65] is consistent with Section 15E(s)(4) of the Exchange Act.[66]

We recognize that issuers may routinely hire third parties to conduct various types of reviews, and not all persons assisting an issuer in these reviews would be subject to the new requirements. Under our new rule, any third party hired by the issuer to perform the review required under Rule 193, and to whom the issuer attributes findings and conclusions of the review in the prospectus will be required to be named in the registration statement and consent to being named as an ''expert'' as described above. On the other hand, if an issuer obtains assistance from a third party but attributes to itself the findings and conclusions of the review required by Rule 193, the third party would not be required to consent to being named as an expert.[67] In either case, the prospectus disclosure should make clear whether the disclosed finding and conclusions are those of the issuer or of a third party.[68] We believe that the hiring by an issuer of a third party to perform the review and using that review to market its securities would be inconsistent with disclosure that the issuer attributes to itself the findings and conclusions of the review.[69] We also note that an issuer may rely on multiple third parties to fulfill its Rule 193 review obligation, provided the issuer complies with the above requirements for each third party.

We note commentators' concern that some third parties might not consent to being named as experts. We are not requiring a third-party review and, if the issuer obtains the assistance of a third party, the issuer can attribute the findings and conclusions of the review to itself and avoid the need to obtain consent. If, however, the issuer attributes the findings and conclusions to a third party, we believe that the third party should be named in the registration statement and be treated in the same manner as other experts, such as investment banks that provide fairness opinions. We believe, based on discussions with industry participants, that at least some third-party reviewers will continue to perform reviews for ABS issuers and will revise their review procedures as needed to be comfortable

[54] *See* comment letters from ABA; Consumer Federation.

[55] *See* comment letter from CRL.

[56] *See* comment letter from Barnard.

[57] *See* comment letter from CAQ.

[58] *See* comment letter from CAQ.

[59] *See* comment letters from ABASA; Clayton; SIFMA.

[60] *See* comment letters from Clayton; SIFMA.

[61] *See* comment letter from SIFMA.

[62] *See* comment letter from SIFMA.

[63] *See* comment letters from ABASA; Clayton; SIFMA.

[64] *See* comment letter from SIFMA. *See also* comment letter from Clayton (noting there is a significant risk it will refrain from accepting engagements to perform the asset review mandated by Rule 193 leading issuers to more in-house reviews, which could give rise to potential conflicts of interest).

[65] In this release, we refer to third parties engaged for purposes of reviewing the assets also as third-party due diligence providers.

[66] As noted above, Section 15E(s)(4) of the Exchange Act requires the issuer or underwriter of an ABS to make publicly available the findings and conclusions of a third-party due diligence report obtained by the issuer or the underwriter and requires a third-party due diligence provider that is employed by a nationally recognized statistical rating organization (''NRSRO''), an issuer or an underwriter to provide a written certification to the NRSRO that produces a credit rating. Under Section 15E(s)(4) of the Exchange Act, the Commission is required to establish the appropriate format and content for the certifications ''to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.'' As noted above, we will address these requirements in a subsequent rulemaking.

[67] If the findings and conclusions are attributed to a third party, that portion of the disclosure would be expertised. If the findings and conclusions are instead attributed to the issuer, that portion of disclosure would not be expertised. *See* Securities Act Section 11 [15 U.S.C. 77k].

[68] We note that this approach is comparable to the staff's position in the context of a registrant that has engaged a third-party expert to assist in determining the fair values of certain assets or liabilities disclosed in a Securities Act registration statement. *See* Compliance and Disclosure Interpretations, Division of Corporation Finance, at Section 233, *available at http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm* (whether a registrant that has engaged a third-party expert to assist in determining fair value must disclose the name of the third-party expert in its registration statement and obtain the third-party's consent under Securities Act Section 7(a) depends on whether the disclosure attributes the statement to the third-party expert).

[69] If an issuer obtains the assistance of a third party to perform the review, and discloses this fact pursuant to Item 1111 of Regulation AB, as discussed below, this would not be using the information to market the securities provided the only information disclosed is that which is required by the rule, and the issuer does not otherwise use this fact to market the securities. Similarly, we are of the view that consent to being named as an expert would not be required of a third party hired by the issuer to assist in performing the review solely based on the fact that the issuer provides disclosure pursuant to Item 1111 of Regulation AB that the issuer hired a third party for the purpose of assisting it to perform the Rule 193 review.

being named as experts in registered ABS transactions. We also note that third parties would not be required to provide consent in all instances, but only where the issuer attributes the findings and conclusions of the review to the third party.

*D. Disclosure Requirements*

1. Proposed Rules

Item 1111 of Regulation AB [70] outlines several aspects of the pool that the prospectus disclosure for ABS should cover. We proposed amendments to Item 1111 to require disclosure regarding the nature of the issuer's review of the assets under Rule 193 and the findings and conclusions of the review. In addition, we re-proposed amendments from our 2010 ABS Proposing Release to require disclosure regarding the composition of the pool as it relates to assets that do not meet disclosed underwriting standards, as we believe this information would promote a better understanding of the impact of the review and the composition of the pool assets.

We proposed new Item 1111(a)(7) of Regulation AB to require that an issuer of ABS disclose the nature of the review it conducts to satisfy proposed Rule 193. This proposed requirement would implement Securities Act Section 7(d)(2),[71] as added by the Act. As discussed in the Proposing Release, this disclosure would include whether the issuer has hired a third-party firm for the purpose of reviewing the assets. We also proposed to amend Item 1111(a)(7) to require an ABS issuer to disclose the findings and conclusions of any review performed by the issuer or by a third party engaged for purposes of reviewing the assets.[72] We also proposed Item 1111(a)(8) which re-proposed additional requirements substantially similar to those we had previously proposed in the 2010 ABS Proposing Release. This item would have required disclosure of whether, and if so, how, any assets in the pool deviate from the disclosed underwriting criteria and data on the amount and characteristics of those assets that did not meet the disclosed standards. In addition to what we proposed in the 2010 ABS Proposing Release, we proposed a requirement that the issuer disclose the entity (*e.g.*, sponsor, originator or underwriter) who determined that such assets would be included in the pool, despite not having met the disclosed underwriting standards.

2. Comments on the Proposed Amendments

Comments on the proposal were mixed. Some commentators supported the proposal in Item 1111(a)(7) [73] and another commentator expressed support for the proposal in Item 1111(a)(8).[74] Another commentator requested that the Commission modify the proposal in Item 1111(a)(8) such that the disclosure would be required only to the extent it is material to investors.[75] This commentator also suggested that the Commission clarify that subparagraph (8) not be read to require 100% diligence of the pool such that, to the extent that an issuer does a sampling of the pool, only the deviations that are discovered in that sampling would need to be reported.[76] This commentator also objected to the proposal to disclose the entity who made the decision to include the deviating assets as part of the pool, because multiple transaction parties could collectively agree on what assets are to be included in the pool.[77] To the extent that in a particular transaction a single party makes the decision, this commentator argued that the disclosure is not material and should not be required to be reported.[78] Another commentator suggested that such disclosure not be required for offerings of CMBS because decisions about CMBS pool assets are not susceptible to being attributed to a particular party due to the fungible nature of CMBS assets and the fact that the decisions are an iterative process involving the sponsor, issuer, and at times investors, to largely the same degree.[79]

Some commentators recommended that the rule provide further guidance on the findings and conclusions that must be disclosed.[80] One commentator highlighted that third-party due diligence reviews typically evaluate a sample of assets according to underwriting guidelines provided by the asset seller and other criteria specified by the asset purchaser.[81] This commentator noted that the typical end product of a third-party due diligence review in RMBS offerings is the grading of specific loans in a sample provided by the asset purchaser, according to whether the loans meet the seller guidelines and buyer criteria or whether they comply with applicable laws.[82] In order for investors to be able to understand the loan ''grades'' and evaluate the quality of the reviewed assets, however, this commentator suggested that the rule require disclosure of the controlling guidelines and criteria used to produce the loan grades or designations.[83]

One commentator argued that Item 1111(a)(8) seems to assume that all originators have uniform underwriting criteria that permit the evaluation of most loans on a mechanical basis.[84] In particular, this commentator explained that auto loan originators do not have hard and fast guidelines by which most loan applications can be evaluated. Instead, explained this commentator, such originators use electronic decision-making systems as a first filter for applications. Most decisions, however, are made by credit analysts at a variety of levels and the fact that a given loan required a higher level of approval does not mean that the loan should be considered an exception to the underwriting guidelines because there may be many reasons why a loan might require a higher level of approval and still fit within the ''standard process'' of the originator. While this commentator did not object to the Commission's formulation of Item 1111(a)(8), it believed that many sponsors of auto loan ABS would not provide any incremental disclosure in response to new Item 1111(a)(8) because the underwriting guidelines in their prospectuses indicate that they make judgmental underwriting decisions, and there are not disclosed standards by which loans are evaluated, so there will not be a need to describe loans that fail to meet those standards.

3. Final Rules

After considering the comments, we are adopting the amendments to Item 1111 of Regulation AB substantially as proposed. We agree with commentators that the disclosure should provide a clear picture of the review undertaken and the results and have thus revised the item to make that clearer.

a. Nature of Review

New Item 1111(a)(7) of Regulation AB requires that an issuer of ABS disclose the nature of the review it conducts to satisfy proposed Rule 193. This would include whether the issuer has hired a third-party firm for the purpose of

[70] 17 CFR 229.1111.

[71] 15 U.S.C. 77g(d)(2).

[72] This language is intended to be consistent with the language used in Exchange Act Section 15E(s)(4)(A).

[73] *See* comment letters from Chuff; SIFMA.

[74] *See* comment letter from Fitch.

[75] *See* comment letter from SIFMA.

[76] *See* comment letter from SIFMA.

[77] *See* comment letter from SIFMA.

[78] *See* comment letter from SIFMA.

[79] *See* comment letter from CRE Finance Council.

[80] *See* comment letters from CRE Finance Council; Levin.

[81] *See* comment letter from Levin.

[82] *See* comment letter from Levin.

[83] *See* comment letter from Levin.

[84] *See* comment letter from AFSA.

reviewing the assets, or to assist it in reviewing the assets. This would include a description of the scope of the review, such as whether the issuer or a third party conducted a review of a sample of the assets and what kind of sampling technique was employed (*i.e.,* random or adverse).

b. Findings and Conclusions

Under new Item 1111(a)(7), the issuer will be required to disclose the findings and conclusions of the review performed by the issuer or by a third party engaged for purposes of reviewing the assets. Although Section 7(d) of the Securities Act does not require our rules to mandate that the issuer disclose the findings and conclusions of a review in its registration statement, we continue to believe this information is important for investors to consider along with the information in the registration statement relating to the nature of the issuer's review as required to be publicly disclosed by Securities Act Section 7(d). We continue to believe that disclosure of the findings and conclusions of the review will provide investors with a better picture of the assets than would be provided by disclosure only of the nature of the review and would provide a better ability to evaluate the review. We have revised the item to make clear that disclosure of the findings and conclusions necessarily requires disclosure of the criteria against which the loans were evaluated, and how the evaluated loans compared to those criteria along with the basis for including any loans not meeting those criteria.[85] In order to ensure that this requirement is clear, we have included an instruction to the rule.

c. Disclosure Regarding Exception Loans

We are adopting, as proposed, Item 1111(a)(8) of Regulation AB. Item 1111(a)(8) of Regulation AB requires issuers to disclose how the assets in the pool deviate from the disclosed underwriting criteria and include data on the amount and characteristics of those assets that did not meet the disclosed standards. Issuers are required to disclose the entity (*e.g.,* sponsor, originator, or underwriter) who determined that such assets should be included in the pool, despite not having met the disclosed underwriting standards, and what factors were used to make the determination. For example, this could include compensating factors, such as those included in an issuer's waiver policies for including in the pool loans that fail to meet the disclosed underwriting criteria, or a determination that the exception was not material. If compensating or other factors were used, issuers will be required to provide data on the amount of assets in the pool, or in the sample or otherwise known to the issuer if only a sample was reviewed, that are represented as meeting each factor and the amount of assets that do not meet those factors. We also believe that this information will help provide investors with a more complete understanding of the quality and extent of the issuer's review of the assets (through hiring a third-party or otherwise) and how that relates to a determination to either include a loan in the pool or exclude it from the pool.

To the extent the underwriting criteria outlined in the prospectus are broad or describe underwriting decisions involving the use of discretion, the prospectus would need to provide disclosure of how the broad subjective underwriting decisions were applied. We note that Item 1111 of Regulation AB requires a description of the underwriting criteria used to originate or purchase the pool assets. Thus, where originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval are evaluated based on judgmental underwriting decisions, the criteria for the first level of underwriting should be disclosed, and loans that are included in the pool despite not meeting the criteria for this first level of underwriting criteria should be disclosed under Item 1111(a)(8).

We also are adopting, with some clarification, the requirement that the issuer disclose the entity (*e.g.,* sponsor, originator or underwriter) who determined that such assets would be included in the pool, despite not having met the disclosed underwriting standards. While we are aware of some commentators' objection to reporting this information because of the possibility that multiple transaction parties could collectively agree on what assets are to be included in the pool, we continue to believe that this additional requirement will assist investors in understanding the entities along the securitization chain that may be directing decisions to include exception loans in the pool, even where more than one entity may be involved.[86] We believe this information will be useful to investors because it will provide investors with information to gauge whether the decision to accept such loans may be subject to a potential conflict of interest. We have revised the rule to clarify that if multiple parties are involved in this decision, they should all be named.

*E. Transition Period*

Consistent with one commentator's suggestion, we have set a compliance date for the rule we adopt today that will allow market participants and industry groups sufficient time to develop procedures and systems required to comply with rule's requirements.[87] As this commentator noted, and as we recognize, other initiatives and changes to the markets are simultaneously affecting participants in the securitization industry.[88] Accordingly, any registered offering of ABS commencing with an initial bona fide offer after December 31, 2011, must comply with the new rules. We believe, consistent with one commentator's suggestion, a transition period will allow issuers time to design a review to meet the rule's minimum standard.[89] We also believe a transition period will benefit third parties who, under the rule, potentially may be subject to expert liability in certain circumstances and may require a transitional period to implement procedures, or revise current ones, in light of the potential expert liability.

## III. Paperwork Reduction Act

Certain provisions of the final rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[90] We published a notice requesting comment on the collection of information requirements in the Proposing Release for the rule amendments, and we submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[91] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control

[85] Such disclosure would be required in order to provide meaningful context to disclosure of the findings and conclusions of the issuer or their-party due diligence providers. *See* comment letter from Levin (stating that disclosure of loan grades, as used by third-party due diligence providers, in isolation, without disclosure of controlling guidelines used to produce those grades, is not useful to investors).

[86] *See, e.g.,* Massachusetts AG comment letter.

[87] *See* comment letter from SIFMA.

[88] *See, e.g.,* Improvements to the Asset-Backed Securitization Process, Title IX, Subtitle D of the Act; *Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization or Participation After September 30, 2010,* Final Rule, Federal Deposit Insurance Corporation (Sept. 27, 2010).

[89] *See* comment letter from SIFMA.

[90] 44 U.S.C. 3501 *et seq.*

[91] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

number. The titles for the collections of information are: [92]

(1) ''Form S–1'' (OMB Control No. 3235–0065);

(2) ''Form S–3'' (OMB Control No. 3235–0073); and

(3) ''Regulation S–K'' (OMB Control No. 3235–0071).

Compliance with the proposed amendments is mandatory. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the information disclosed.

Our PRA burden estimates for the final amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used with respect to ABS, as well as information from outside sources.[93] When possible, we base our estimates on an average of the data that we have available for the years 2004 through 2009.

In the Proposing Release, we requested comment on the PRA analysis. No commentators responded to our request for comment on the PRA analysis.

*Forms S–1 and S–3*

The amendments to Item 1111 of Regulation AB will increase the disclosure required in offerings of ABS registered on either Forms S–1 or S–3. The amendment to Item 1111 requires issuers to disclose how the assets in the pool deviate from the disclosed underwriting criteria, and include data on the amount and characteristics of those assets that did not meet the disclosed standards. Issuers will be required to disclose the entity who determined that such assets should be included in the pool and what factors were used to make the determination. Under new Rule 193, if an issuer employs a third party to perform the review and attributes the findings and conclusions of the review to the third party, the third party must be named in the registration statement and consent to being named as an expert in accordance with Securities Act Rule 436. Thus, we anticipate that issuers will incur a burden in obtaining a consent from the third party.

We believe that the requirements will increase the annual incremental burden to issuers by 30 hours per form.[94] For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour. From 2004 through 2009, an estimated average of four offerings was registered annually on Form S–1 by ABS issuers. We believe that the requirements will result in an increase to the internal burden to prepare Form S–1 of 30 burden hours ($0.25 \times 30 \times 4$) and an increase in outside costs of $36,000 ($\$400 \times 0.75 \times 30 \times 4$). During 2004 through 2009, we estimate an annual average of 929 offerings of ABS registered on Form S–3. Therefore, we believe that the requirements we are adopting will result in an increase to the internal burden to prepare Form S–3 filings of 6,968 burden hours ($0.25 \times 30 \times 929$) and a total cost of $8,361,000 ($400 \times 0.75 \times 30 \times 929$).

*Regulation S–K*

Regulation S–K includes the item requirements in Regulation AB and contains the disclosure requirements for filings under both the Securities Act and the Exchange Act. In 2004, we noted that the collection of information requirements associated with Regulation S–K as it applies to ABS issuers are included in Form S–1 and Form S–3.[95] The amendments that we are adopting revise Regulation S–K. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to ABS issuers. The rules in Regulation S–K do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour for Regulation S–K for administrative convenience.

[92] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

[93] We rely on two outside sources of ABS issuance data. We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC).

[94] This does not reflect burdens associated with the review that would be required as a result of Rule 193, which we believe does not impose a collection of information requirement for purposes of our PRA analysis.

[95] *See* 2004 Regulation AB Adopting Release.

| Form | Current annual responses | Proposed annual responses | Current burden hours | Increase in burden hours | Proposed burden hours | Current professional costs | Increase in professional costs | Proposed professional costs |
|---|---|---|---|---|---|---|---|---|
| S–1 | 1,168 | 1,168 | 247,982 | 30 | 248,012 | $297,578,400 | $36,000 | $297,614,400 |
| S–3 | 2,065 | 2,065 | 236,959 | 6,968 | 243,927 | 284,350,500 | 8,361,000 | 292,711,500 |
| Total | ..... | ..... | ..... | 6,998 | ..... | ..... | 8,397,000 | ..... |

## IV. Benefit-Cost Analysis

The amendments to our regulations for ABS relate to requiring an issuer of an ABS to perform a review of the assets underlying the security. The rules we are adopting are intended to implement the requirements under new Section 7(d) of the Securities Act. First, we are adopting a new Securities Act rule to require issuers of registered offerings of asset-backed securities to perform a review of the assets underlying the asset-backed securities that, at a minimum, must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus is accurate in all material respects. Second, we also are adopting new requirements in Regulation AB to require disclosure regarding:

- The nature of the review of assets conducted by an ABS issuer;
- The findings and conclusions of a review of assets conducted by an ABS issuer or third party;
- Disclosure regarding assets in the pool that do not meet the underwriting standards; and
- Disclosure regarding which entity determined that the assets should be included in the pool, despite not having met the underwriting standards and what factors were considered in making this determination.

The Commission is sensitive to the costs and benefits imposed by the rules it is adopting. The discussion below focuses on the costs and benefits of the amendments made by the Commission to implement the Act within the Commission's permitted discretion and related amendments not required by the Act, rather than the costs and benefits of the Act itself. Except as discussed below, no commentators responded to our request for comment on the costs and benefits of the proposed rule identified in the Proposing Release.

### *A. Benefits*

The amendments we are adopting are designed to increase investor protection by implementing the requirement in Section 7(d) of the Securities Act, which was added by Section 945 of the Act, for issuers to perform a review of the underlying assets and disclose the nature of the review. We expect that requiring a minimum level of review of the assets will result in loan pools that have fewer loans that do not conform to the disclosures in the prospectus regarding the pool assets. We also expect that establishing a minimum level of review will prevent some potential reviews that are not sufficiently thorough, and disclosures about the pool assets that are not sufficiently accurate. Finally, we also expect that a minimum standard of review will benefit investors by facilitating comparability among reviews performed by different issuers.

On the other hand, we believe that a principles-based approach is appropriate to allow for review procedures to be based upon the economic characteristics of the asset pool that is being examined. Accordingly, our rules do not prescribe specific guidelines to employ in reviews. This flexibility should help increase the usefulness of reviews for investors and limit their costs.

Further, the detailed description of the nature of the review and disclosure of findings and conclusions should encourage more rigorous asset reviews, whether by issuers or third parties engaged to perform the asset reviews. These disclosures would complement the requirement to perform a review by improving the quality, and investor understanding, of the review.

Although issuers in registered offerings are not required to use a third party to satisfy the review requirement, as a condition to such use, if the findings and conclusions of the review will be attributed to a third party, a third party would be required to consent to being named in the registration statement and thereby accept potential expert liability, which should increase the quality of that review. In registered offerings, where the third party consents to being named in the prospectus, the potential expert liability for the findings and conclusions of third-party reviews should provide accountability and creates stronger incentives to perform high-quality reviews that protect investors. The resulting disclosures should reduce the information risk of investing in these securities. Our amendments to require detailed disclosure by the issuer of the nature, findings and conclusions of its review could result in improved asset review practices. Moreover, this could be useful to investors if they prefer investing in securities about which there is disclosure indicating a more robust review over investing in securities about which the disclosure indicates a less robust review.

The requirement to disclose exception loans may provide important information to investors regarding the characteristics of the pool that may otherwise not be publicly known. For those issuers that currently provide asset-level information about the pool, an investor might be able, without this new requirement, to determine some information about the number of exception loans; however, even where this could be determined under current rules, the amendments would reduce investors' cost of information production by reducing duplicative efforts to gather such data on their own or purchase it through data intermediaries. We also are adopting amendments to require disclosure of the entities that have determined that an asset that deviates from underwriting standards should, nonetheless, be included in the pool. Because third-party asset review providers typically work for sponsors, there is potentially a conflict of interest when a sponsor can waive or overrule the third-party's conclusions that insufficient compensating factors exist to allow inclusion of an asset that does not meet the underwriting standards governing the pool.[96] We expect that information about which entity made the determination to include an asset in the pool despite not having met the underwriting standards will provide investors with information to gauge whether the decision to accept such loans otherwise may be subject to a conflict of interest. We also expect this will reduce the cost of information asymmetry and could be useful information to investors because investors may be able to price a securitization of a pool of assets more accurately. It also may assist credit rating agencies in assigning more informed credit ratings, and investors may be able to price ABS offerings more accurately.

Our amendments requiring detailed disclosure of the nature of the review, as well as the findings and conclusions of any such review, may increase investor confidence in the market for ABS. These disclosures could allow investors to better understand the information about the asset pool and credit risk of the asset pool.

### *B. Costs*

The final rule would implement the requirement in Section 7(d) of the Securities Act, added by Section 945 of the Act, that all issuers of registered ABS offerings perform a review of the underlying assets and that those issuers disclose the nature of their review. Although issuers of ABS likely already perform some level of review of the underlying assets and many originators review the assets at origination, ABS issuers in registered offerings may incur additional costs to perform more extensive reviews that are sufficient to comply with the minimum level of

[96] *See, e.g.,* comment letter from Massachusetts AG.

review required by the rule, whether the issuer performs the review itself, or hires a third-party to perform the review. Moreover, this could be costly to issuers, if investors do not seek to invest in securities about which there is disclosure indicating a more robust review over investing in securities about which the disclosure indicates a less robust review.

It is possible that by establishing a minimum standard for the review, some issuers who otherwise may have performed a more thorough review may design their reviews to accomplish no more than the minimum required by the rule.[97] We note, however, that under Rule 193 issuers may obtain a third party to perform the required review and attribute the review to the third party provided the third party is named in the registration statement and consents to being named as an expert in the registration statement. This flexibility in the rule allows for those third-party reviewers that consent to being named as an expert in the registration statement to conduct more thorough reviews and separate themselves from other third-party reviewers that would not provide those higher levels of assurance. At the same time, commentators observed that there are incentives not to conduct adequate due diligence, which supports the need for a minimum standard required by law.[98]

Rule 193 permits an issuer to rely on a third party to perform the required review, provided the review satisfies the standard in Rule 193. If the issuer will attribute the findings and conclusions of the review to the third party, the third party will be required to be named in the registration statement and consent to be named as an expert in the registration statement. One commentator predicted that requiring third parties to be named in the registration statement as experts will materially impact the cost of due diligence services which will likely render securitizations non-economic for issuers.[99] Some asset classes may not have third-party due diligence providers available to be engaged to conduct a review. In instances where an issuer must conduct the review and attributes to itself the findings and conclusions of the review, we believe that the costs of conducting these reviews will not exceed the costs of engaging third parties to conduct the reviews.

Further, it is possible that third-party providers may lack sufficient capabilities to provide the review for which they are retained. Additionally, third-party review firms are not registered with the Commission and some may not be subject to professional standards. However, our rules subject third-party review firms in registered transactions to potential expert liability for the disclosure regarding the findings and conclusions of their review of the assets. For certain firms, however, in particular smaller review firms that may lack the financial resources to cover their potential liabilities, expert liability may not be a significant deterrent because these firms have less financial resources exposed to potential liability and may not be as concerned about losing potential claims compared to firms that have more financial resources exposed to liability. This may create a burden on both qualified providers of due diligence and the securitizers that hire them.

We acknowledge that the potential for expert liability could impose costs on issuers and third-party due diligence providers, and they may be required to adjust their practices (and prices in the case of third parties) to account for this new requirement. Some commentators noted that it is possible that third parties engaged by issuers to perform the review required by Rule 193 may be unwilling to consent to being named in the registration statement as experts.[100] In the context of RMBS, some credit rating agencies require third-party reviews on all residential mortgage pools as a condition to rating the transaction.[101] If all third-party providers are unwilling to consent to being named in the registration statement as experts, issuers that are unwilling to attribute to themselves alone the findings and conclusions of the review may be unable to obtain a third party review and, consequently, be unable to obtain a credit rating. We note, however, that a third party would not be required to consent to being named as an expert if an issuer does not attribute the findings and conclusions of the review to the third party. We also believe, based on discussions with industry participants, including third-party review firms, that at least some third parties hired to perform the review will make any necessary adjustments to their review procedures and prices in order to be willing to be named in the registration statement as experts.

As adopted, the amendments requiring issuers to provide detailed disclosure relating to the nature of the review, the findings and conclusions of such review, and disclosure about loans that deviate from the disclosed underwriting criteria will impose a disclosure burden.

## V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act [102] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 2(b) of the Securities Act [103] and Section 3(f) of the Exchange Act [104] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. Below, we address these issues for each of the substantive changes we are adopting regarding offerings of ABS.

As a result of the financial crisis and subsequent events, the market for securitization has declined due, in part, to perceived uncertainty about the accuracy of information about the pools backing the ABS and perceived problems in the securitization process that affected investors' willingness to participate in these offerings.[105] Greater transparency of the review performed on the underlying assets would decrease the uncertainty about pool information and, thus, should help investors price these products more accurately. The requirements we are adopting are likely to positively affect pricing, efficiency, and capital allocation in ABS capital markets. The minimum review standard that we are adopting helps to strengthen these effects by decreasing the possibility of low quality review providers entering the market and possibly precipitating a decrease in the quality of due diligence.

Finally, the introduction of expert liability on the third-party review

[97] *See, e.g.,* comment letter from Consumer Federation (observing that all members of the securitization supply change have ''strong incentives * * * to skimp on due diligence'').

[98] *Id.*

[99] *See* comment letter from SIFMA.

[100] *See, e.g.,* comment letters from ASF; Clayton; SIFMA.

[101] *See* comment letter from Fitch.

[102] 15 U.S.C. 78w(a).

[103] 15 U.S.C. 77b(b).

[104] 15 U.S.C. 78c(f).

[105] *See, e.g.,* David Adler, *A Flat Dow for 10 Years? Why It Could Happen,* Barrons (Dec. 28, 2009).

providers may have consequences for the competition in this market. The possibility of expert liability may provide an incentive for due diligence providers to improve the quality of their reviews. Thus, one possible market outcome is for reviewers to compete on the quality of their services, because high quality providers may credibly separate themselves from lower quality providers by consenting to be named as experts, with potential liability resulting from that designation.

On the other hand, the possibility of expert liability may not be a significant deterrent for smaller due diligence providers that do not have the financial resources to cover their potential liabilities. This may adversely affect competition in both the market for the provision of due diligence and the market for ABS. Diligent providers of asset reviews may be pressured to decrease their standards, their prices or both. In addition, ABS with reviews obtained from such parties may affect the pricing of competing securities.

One commentator predicted that imposing expert liability on third-party reviewers could result in new and less-qualified firms entering the market, particularly since the third-party diligence business does not have any barriers to entry like those that apply to other professions which have potential expert liability.[106] Alternatively, the possibility of expert liability could be an incentive for due diligence providers to compete on quality and improve their capabilities.

In summary, taken together the amendments and regulations we are adopting implement Congress' mandate under the Act and are designed to improve investor protection, improve the quality of the assets underlying an ABS, and increase transparency to market participants. We believe that the amendments also would improve investors' confidence in asset-backed securities and help recovery in the asset-backed securities market with attendant positive effects on efficiency, competition and capital formation.

## VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[107] we certified that, when adopted, the proposals would not have a significant economic impact on a substantial number of small entities. We included the certification in Part VIII of the Proposing Release. While we encouraged written comment regarding this certification, none of the commentators responded to this request.

## VII. Statutory Authority and Text of Rule and Form Amendments

We are adopting the new rules and amendments contained in this document under the authority set forth in Sections 6, 7, 10, 19(a), and 28 of the Securities Act, and Sections 3(b), 23(a), and 36 of the Exchange Act.

## List of Subjects in 17 CFR Parts 229 and 230

Advertising, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 — REGULATION S–K

■ 1. The authority citation for part 229 continues to read in part as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 229.1111 by:

■ a. Revising the introductory text to paragraph (a):

■ b. Adding paragraphs (a)(7) and (a)(8).

The revision and additions read as follows:

### § 229.1111 (Item 1111) Pool assets.

* * * * *

(a) *Information regarding pool asset types and selection criteria.* Provide the following information:

* * * * *

(7)(i) The nature of a review of the assets performed by an issuer or sponsor (required by § 230.193), including whether the issuer of any asset-backed security engaged a third party for purposes of performing the review of the pool assets underlying an asset-backed security; and

(ii) The findings and conclusions of the review of the assets by the issuer, sponsor, or third party described in paragraph (a)(7)(i) of this section.

*Instruction to Item 1111(a)(7):* The disclosure required under this item shall provide an understanding of how the review related to the disclosure regarding the assets. For example, if benchmarks or criteria different from that specified in the prospectus were used to evaluate the assets, these should be described, as well as the findings and conclusions. If the review is of a sample of assets in the pool, disclose the size of the sample and the criteria used to select the assets sampled. If the issuer has engaged a third party for purposes of performing the review of assets, and attributes the findings and conclusions of the review to the third party in the disclosure required by this item, the issuer must provide the name of the third-party reviewer and comply with the requirements of § 230.436 of this chapter.

(8) If any assets in the pool deviate from the disclosed underwriting criteria or other criteria or benchmark used to evaluate the assets, or any assets in the sample or assets otherwise known to deviate if only a sample was reviewed, disclose how those assets deviate from the disclosed underwriting criteria or other criteria or benchmark used to evaluate the assets and include data on the amount and characteristics of those assets that did not meet the disclosed standards. Disclose which entity (*e.g.,* sponsor, originator, or underwriter) or entities determined that those assets should be included in the pool, despite not having met the disclosed underwriting standards or other criteria or benchmark used to evaluate the assets, and what factors were used to make the determination, such as compensating factors or a determination that the exception was not material. If compensating or other factors were used, provide data on the amount of assets in the pool or in the sample that are represented as meeting each such factor and the amount of assets that do not meet those factors. If multiple entities are involved in the decision to include assets despite not having met the disclosed underwriting standards, this should be described and each participating entity should be disclosed.

* * * * *

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 is amended by adding the following citation in numerical order to read as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a– 24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

[106] *See* comment letter from Clayton.

[107] 5 U.S.C. 605(b).

Section 230.193 is also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

* * * * *

4. Add § 230.193 to read as follows:

**§ 230.193 Review of underlying assets in asset-backed securities transactions.**

An issuer of an ''asset-backed security,'' as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)), offering and selling such a security pursuant to a registration statement shall perform a review of the pool assets underlying the asset-backed security. At a minimum, such review must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the form of prospectus filed pursuant to § 230.424 of this chapter is accurate in all material respects. The issuer may conduct the review or an issuer may employ a third party engaged for purposes of performing the review. If the findings and conclusions of the review are attributed to the third party, the third party must be named in the registration statement and consent to being named as an expert in accordance with § 230.436 of this chapter.

*Instruction to § 230.193:* An issuer of an ''asset-backed security'' may rely on one or more third parties to fulfill its obligation to perform a review under this section, provided that the reviews performed by the third parties and the issuer, in the aggregate, comply with the minimum standard in this section. The issuer must comply with the requirements of this section for each third party engaged by the issuer to perform the review for purposes of this section. An issuer may not rely on a review performed by an unaffiliated originator for purposes of performing the review required under this section.

Dated: January 20, 2011.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–1503 Filed 1–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9505]**

**RIN 1545–BG36**

### Hybrid Retirement Plans

*Correction*

In rule document 2010–25941 beginning on page 64123 in the issue of Tuesday, October 19, 2010, make the following correction:

**§ 1.411(a)(13)–1 [Corrected]**

On page 64137, in § 1.411(a)(13)–1,in the first column, in paragraph (e)(1)(iii)(E), in the fourth and fifth lines, ''section 411(a)(13)(B) but would otherwise apply'' should read ''section 411(a)(13)(B) would otherwise apply''.

[FR Doc. C1–2010–25941 Filed 1–24–11; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9391]**

**RIN 1545–BF85**

### Source Rules Involving U.S. Possessions and Other Conforming Changes; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to final regulations (TD 9391) that were published in the **Federal Register** on Wednesday, April 9, 2008 (73 FR 19350) providing rules under section 937(b) of the Internal Revenue Code for determining whether income is derived from sources within a U.S. possession or territory specified in section 937(a)(1) (generally referred to in this preamble as a ''territory'') and whether income is effectively connected with the conduct of a trade or business within a territory as well as providing guidance under section 932 and other provisions related to the territories.

**DATES:** This correction is effective on January 25, 2011, and is applicable on April 9, 2008.

**FOR FURTHER INFORMATION CONTACT:** J. David Varley, (202) 435–5262 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations and removal of temporary regulations that are the subjects of this document are under sections 1, 170A, 861, 871, 876, 881, 884, 901, 931, 932, 933, 934, 935, 937, 957, 1402, 6012, 6038, and 6046 of the Internal Revenue Code.

**Need for Correction**

As published, final regulations (TD 9391) contain an error that may prove to be misleading and is in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

**PART 1—INCOME TAXES**

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

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.932–1 is amended by revising paragraph (e)(1) to read as follows:

**§ 1.932–1 Coordination of United States and Virgin Islands income taxes.**

* * * * *

(e) * * * (1) *U.S. returns.* Except as otherwise provided for returns filed under paragraph (c)(2)(ii) of this section, a return required under the rules of paragraphs (b) and (c) of this section to be filed with the United States must be filed as directed in the applicable forms and instructions.

* * * * *

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

[FR Doc. 2011–1408 Filed 1–24–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

### 30 CFR Part 285

**[Docket ID: BOEM–2010–0045]**

**RIN 1010–AD71**

### Regulation and Enforcement; Renewable Energy Alternate Uses of Existing Facilities on the Outer Continental Shelf—Acquire a Lease Noncompetitively

**AGENCY:** Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** BOEMRE is withdrawing the direct final rule to amend BOEMRE's renewable energy regulatory provisions that pertain to noncompetitive acquisition of leases, published on November 26, 2010 (75 FR 72679), under Docket ID: BOEM–2010–0045. In the direct final rule, BOEMRE stated that if it received significant adverse

comments during the rule's 30-day comment period, it would publish a notice of withdrawal in the **Federal Register**.

BOEMRE has determined that it has received significant adverse comments during the comment period and, therefore, is withdrawing the direct final rule. BOEMRE intends to publish a notice of proposed rulemaking within 30 days of the date of this notice in order to reinitiate rulemaking. The proposed rule will have a 30-day public comment period. All comments received in response to the original November 26, 2010, notice will be considered in relation to the proposed rule unless they are withdrawn by the commenters, so those who commented on the original November 26, 2010, direct final rule need not re-submit their comments.

However, parties who responded to the November 26, 2010, notice may submit additional comments on the proposed rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Timothy Redding at (703) 787–1219.

Dated: January 18, 2011.

**Michael R. Bromwich,**

*Director, Bureau of Ocean Energy Management, Regulation and Enforcement.*

[FR Doc. 2011–1505 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3, 17, and 21

**RIN 2900–AN27**

### Herbicide Exposure and Veterans With Covered Service in Korea

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule the Department of Veterans Affairs' (VA) proposal to amend VA adjudication, medical, and vocational rehabilitation and employment regulations to incorporate relevant provisions of the Veterans Benefits Act of 2003. Specifically, this document amends VA regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in their children. It also amends VA's medical regulations by correcting the Health Administration Center's hand-delivery address.

**DATES:** *Effective Date:* This final rule is effective February 24, 2011.

*Applicability Date:* This final rule shall apply to all applications for benefits that are received by VA on or after February 24, 2011 and to all applications for benefits that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on February 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Thomas Kniffen, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9366. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On July 24, 2009, VA published a proposal in the **Federal Register** (74 FR 36640), to amend its adjudication, medical, and vocational rehabilitation and employment regulations by incorporating relevant provisions from the Veterans Benefits Act of 2003, Public Law 108–183. More specifically, based on Section 102 of the Act, codified at 38 United States Code (U.S.C.) 1821, VA proposed to amend VA regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in such veterans' children. Additionally, VA proposed to amend medical regulations by correcting the Health Administration Center's hand-delivery address. We provided a 60-day comment period and interested persons were invited to submit comments on or before September 22, 2009. We received five written comments from the public based on the proposed rule. Two of the responses were comments from Vietnam Veterans of America (VVA) and National Veterans Legal Services Program (NVLSP). The remaining three comments were from the general public.

One commenter supported promulgation of the proposed regulation. The commenter asserted approval when stating, ''If passed will be a great help towards helping Korea DMZ Vets with their exposure.'' The commenter later stated: ''This in fact would promote fairness and be beneficial to Vets that served along the DMZ. However, it appears that the new proposed presumption Agent Orange exposure rule, [sic] will not benefit Korea DMZ Veterans that served outside of the 1968/1969 timeframe.''

NVLSP also asserted approval of the rule by stating that it ''eliminates the need for the claimant to prove a fact that would be difficult to prove on his or her own* * *such a presumption makes the VA claims adjudication process more efficient by making it easier for VA to decide these claims;'' however, NVLSP also expressed the view that the presumption of exposure set forth in the proposed rule applies to too narrow a period. NVLSP asserted that the period should conform to the statutory window of September 1, 1967 through August 31, 1971, stated in the Veterans Benefits Act of 2003 and that the proposed rule fails to provide for residual exposure to herbicides for periods long after herbicide spraying had ceased.

Similarly, VVA expressed that VA is ''taking a step in the right direction'' by putting ''certain veterans who served in Korea along the Demilitarized Zone (DMZ) on par with veterans who served in Vietnam and were also exposed to herbicides.'' VVA contended that, based on past and current scientific evidence regarding the long-term effects of herbicides, it is clear that herbicides ''can continue to be toxic and hazardous'' long after they are applied, and that veterans who served in Korea along the DMZ after July 1969 and have a condition consistent with exposure to herbicides ''are being left out in the cold.'' VVA stated the view that VA's proposal to limit the period covered by the rule is not supported by scientific and medical evidence.

Based upon these comments, VA has determined that revisions to the proposed rule, which defined the presumed exposure period as the period from April 1, 1968 to July 31, 1969, are necessary in order to adequately reflect the statutory provisions in section 102 of the Veterans Benefits Act of 2003, codified at 38 U.S.C. 1821. Section 1821(c) states, ''[A] veteran of covered service in Korea is any individual, without regard to the characterization of that individual's service, who—(1) Served in the active military, naval, or air service in or near the Korean demilitarized zone [DMZ], as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971; and (2) is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to an herbicide agent during such service in or near the Korean demilitarized zone.'' We believe it is reasonable and consistent with the intent of Congress to concede exposure for veterans who served in or near the Korean DMZ after herbicide application ceased, because of the potential for exposure to residuals of herbicides applied in that area. *See* 149 Cong. Rec. H11705–01 (2003) (noting that in order to account for residual exposure ''it is appropriate to extend the qualifying service period beyond 1969 to account

for residual exposure''), *see also* 149 Cong. Rec. S15133–01 (2003). Therefore, we are changing the presumption ending date of July 31, 1969, to August 31, 1971.

However, we make no change based on NVLSP's comment that the beginning presumption date should be September 1, 1967. Neither the statute nor the legislative history suggests that herbicides were used prior to 1968. *See* 149 Cong. Rec. H11705–01 (2003) (noting that the Secretary of Defense identified that herbicides were used between 1968 and 1969), *see also* 149 Cong. Rec. S15133–01 (2003). Furthermore, the statute expressly requires that VA, in consultation with the Department of Defense (DoD), determine whether exposure occurred between September 1, 1967 and August 31, 1971, and thus clearly permits a finding as to whether such exposure could have occurred within that period based on DoD information as to dates of herbicide application. As noted in the proposed rule, DoD has advised that herbicides were applied near the Korean DMZ from April 1968 to July 1969. Therefore, we are revising 38 CFR 3.307(a)(6)(iv) and 3.814(c)(2) to presume herbicide exposure for veterans who served in or near the Korean DMZ between April 1, 1968, the earliest date of potential exposure indicated by DoD, and August 31, 1971, the date identified by Congress. If VA receives evidence that herbicides were used in or near the DMZ from an earlier date, VA may rely on that information in individual cases and may revise the presumption as necessary.

While revising § 3.307(a)(6)(iv) and § 3.814(c)(2), we noted that although the first sentence of § 3.814(c)(2) included the phrase ''in consultation with the Department of Defense'', neither the second sentence nor § 3.307(a)(6)(iv) contained such language. In order to clarify that VA relies on DoD records to determine whether a unit ''operated in or near the Korean DMZ in an area in which herbicides are known to have been applied'', we have added to the second sentence of § 3.814(c)(2) and to § 3.307(a)(6)(iv) the qualifier ''as determined by the Department of Defense'' after ''in a unit that''. Additionally, although § 3.307(a)(6)(iv) noted that exposure within the cited time frame would be presumed ''unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service,'' § 3.814(c)(2) did not. Under 38 U.S.C. 1821(c), a person shall be considered to have ''covered service in Korea'' for purposes of providing benefits for spina bifida in such a person's child if VA determines that they were exposed to herbicides in or near the Korean DMZ between certain dates. Where affirmative evidence shows that a person was not exposed to herbicides during such service, the statutory standard would not be met. Therefore, we are adding the phrase ''unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service'' to § 3.814(c)(2) to clarify that the presumption of exposure may be rebutted.

Another commenter suggested that physical testing be added to the criterion for granting service connection, in order to minimize costs to U.S. taxpayers based on the presumption of herbicide exposure. The commenter stated, ''[I]f [a] veteran served in Vietnam or Korea during the specified time periods, and laboratory testing for indicators of exposure such as abnormally high levels of dioxins, then service connection can be granted on a presumptive basis.'' This comment appears to express concern that a presumption of herbicide exposure based solely on time and location of service may be overly broad. Due to the lapse in time since exposure and the limitations of testing methods, it is not feasible to rely on testing of individual veterans to determine herbicide exposure. As explained above, this rule would presume exposure for veterans who served at the times and places where there was a significant risk of harmful exposure. We believe this approach reasonably balances the concerns identified by the commenter with the purposes of the governing statute and the interests of veterans, their families, and VA. Therefore, we make no change based on this comment.

The final commenter supported the rulemaking, but suggested ''strengthening the evidentiary basis for the presumption of exposure by establishing, in consultation with DoD, a means to determine which veterans assigned to a qualifying unit were indeed active with the unit at the qualifying time and place of presumed exposure.'' The new language in § 3.307(a)(6)(iv) states that a presumption of herbicide exposure shall be presumed ''unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.'' Affirmative evidence to establish that the veteran was not exposed to such agent would include the situations mentioned in the comment where a veteran was on leave or otherwise absent from their unit during the period, as defined in this rule, when exposure would be conceded to have occurred. In practice, VA considers all the evidence of record, and any such determination would be made during the claim adjudication process; therefore, we make no change based on this comment.

Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule with the changes discussed above.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule could only affect VA beneficiaries and will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

**Paperwork Reduction Act**

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The information collection requirements for children of veterans with covered service in Korea are approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0572. The information collection requirements for veterans with covered service in Korea are approved by OMB and have been assigned OMB control number 2900–0001.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3)

materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Therefore, the rule was submitted to OMB for review.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and Tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance Numbers and Titles**

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.019, Veterans Rehabilitation—Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.026, Veterans State Adult Day Health Care; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on September 30, 2010, for publication.

**List of Subjects**

*38 CFR Part 3*

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

*38 CFR Part 17*

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

*38 CFR Part 21*

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Dated: January 19, 2011.

**Robert C. McFetridge,**

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

For the reasons set out in the preamble, 38 CFR chapter 1 is amended as follows:

## PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.27(c) by:
■ a. Revising the paragraph heading.
■ b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

**§ 3.27 Automatic adjustment of benefit rates.**

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

* * * * *

■ 3. Amend § 3.29(c) by:
■ a. Removing ''who are children of Vietnam veterans'' and adding, in its place, ''who are children of Vietnam veterans or children of veterans with covered service in Korea''.
■ b. Revising the authority citation at the end of the section.

The revision reads as follows:

**§ 3.29 Rounding.**

* * * * *

(c) * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

■ 4. Amend § 3.31:
■ a. In the first sentence of the introductory text, by removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.
■ b. By revising the authority citation at the end of the section.

The revision reads as follows:

**§ 3.31 Commencement of the period of payment.**

* * * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5111)

■ 5. Amend § 3.105(g) by:
■ a. Revising the paragraph heading.
■ b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

**§ 3.105 Revision of decisions.**

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5112(b)(6))

* * * * *

■ 6. Amend § 3.114(a) by:
■ a. Removing ''who is a child of a Vietnam veteran'' both times it appears

and adding, in its place, ''who is a child of a Vietnam veteran or child of a veteran with covered service in Korea''.
■ b. Revising the authority citation at the end of the paragraph.

The revision reads as follows:

**§ 3.114 Change of law or Department of Veterans Affairs issue.**

(a) * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5110(g)

* * * * *

■ 7. Amend § 3.216 by:
■ a. Adding ''or'' preceding ''a monetary allowance'' in the first sentence.
■ b. Revising the authority citation at the end of the section.

The revision reads as follows:

**§ 3.216 Mandatory disclosure of social security numbers.**

* * * * *

(Authority: 38 U.S.C. 1832, 5101(c))

**§ 3.261 [Amended]**

■ 8. Amend § 3.261(a)(40) by removing ''who are children of Vietnam veterans (38 U.S.C. 1823(c))'' and adding, in its place, ''who are children of Vietnam veterans or children of veterans with covered service in Korea (38 U.S.C. 1833(c))''.

■ 9. Amend § 3.262(y) by:
■ a. Revising the paragraph heading.
■ b. Removing ''who is the child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.
■ c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

**§ 3.262 Evaluation of income.**

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

■ 10. Amend § 3.263(g) by:
■ a. Revising the paragraph heading.
■ b. Removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.
■ c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

**§ 3.263 Corpus of estate; net worth.**

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

■ 11. Amend § 3.272(u) by:
■ a. Revising the paragraph heading.
■ b. Removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.

The revision reads as follows:

**§ 3.272 Exclusions from income.**

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

■ 12. Amend § 3.275(i) by:
■ a. Revising the paragraph heading.
■ b. Removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.

The revision reads as follows:

**§ 3.275 Criteria for evaluating net worth.**

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

■ 13. Amend § 3.307 by:
■ a. Adding paragraph (a)(6)(iv).
■ b. Revising the authority citation at the end of new § 3.307(a)(6)(iv).

The addition and revision read as follows:

**§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.**

(a) * * *

(6) * * *

(iv) A veteran who, during active military, naval, or air service, served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. *See also* 38 CFR 3.814(c)(2).

(Authority: 38 U.S.C. 501(a), 1116(a)(3), and 1821)

* * * * *

■ 14. Amend § 3.403 by:
■ a. In paragraph (b), removing ''An award of the monetary allowance'' and adding, in its place, ''Except as provided in § 3.814(e), an award of the monetary allowance''.
■ b. In paragraph (b), removing ''date of claim, but'' and adding, in its place, ''the later of the date of claim or the date entitlement arose, but''.
■ c. Revising the authority citation for paragraph (b).
■ d. Revising the authority citation for paragraph (c).
■ e. Adding paragraph (d) and its authority citation.
■ f. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

**§ 3.403 Children.**

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1805, 1832, 5110)

(c) * * *

(Authority: 38 U.S.C. 1815, 1832, 1834, 5110)

(d) *Monetary allowance under 38 U.S.C. 1821 for an individual suffering from spina bifida who is a child of a veteran with covered service in Korea.* Except as provided in § 3.814(e), an award of the monetary allowance under 38 U.S.C. 1821 based on the existence of an individual suffering from spina bifida who is a child of a veteran with covered service in Korea will be effective from either the date of birth if claim is received within 1 year of that date, or the later of the date of claim or date entitlement arose, but not earlier than December 16, 2003.

(Authority: 38 U.S.C. 1821, 1832, 5110)

■ 15. Amend § 3.503 by:
■ a. Revising the heading of paragraph (b).
■ b. Removing the authority citation for paragraph (b).
■ c. Revising the authority citation at the end of the section.

The revisions read as follows:

**§ 3.503 Children.**

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

(Authority: 38 U.S.C. 501, 1832, 5112(b))

■ 16. Amend § 3.814 by:

■ a. Revising the section heading.
■ b. In paragraph (a), first sentence, removing ''is or was a Vietnam veteran'' and adding, in its place, ''is or was a Vietnam veteran or a veteran with covered service in Korea'' and by removing from the third sentence ''are or were both Vietnam veterans'' and adding, in its place, ''are or were both Vietnam veterans or veterans with covered service in Korea''.
■ c. Redesignating paragraphs (c)(2) and (3) as (c)(3) and (4) respectively.
■ d. Adding a new paragraph (c)(2).
■ e. In newly redesignated paragraph (c)(3), removing ''Vietnam era'' and adding, in its place, ''Vietnam era, or whose biological father or mother is or was a veteran with covered service in Korea and who was conceived after the date on which the veteran first had covered service in Korea as defined in this section'' and by removing ''of a Vietnam veteran'' and adding, in its place, ''of a Vietnam veteran or a veteran with covered service in Korea''.
■ f. In paragragh (e) introductory text, removing ''claim or'' and adding, in its place, ''claim (or the date of birth if the claim is received within 1 year of that date) or''.
■ g. Revising the authority citation at the end of the section.
■ h. Adding a cross reference at the end of the section.

The addition and revisions read as follows:

**§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran or a veteran with covered service in Korea.**

* * * * *

(c) * * *

(2) *Covered service in Korea.* For the purposes of this section, the term ''veteran with covered service in Korea'' means a person who served in the active military, naval, or air service in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and who is determined by VA, in consultation with the Department of Defense, to have been exposed to an herbicide agent during such service. Exposure to an herbicide agent will be conceded if the veteran served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

* * * * *

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

*Cross Reference:* 38 CFR 3.307(a)(6)(iv).

■ 17. Amend § 3.815 by revising the authority citation at the end of the section to read as follows:

**§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.**

* * * * *

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

## PART 17—MEDICAL

■ 18. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as noted in specific sections.

■ 19. Revise the undesignated center heading preceding § 17.900 to read as follows:

**Health Care Benefits for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects**

■ 20. Amend § 17.900 by:
■ a. Adding in alphabetical order, the definition of ''Veteran with covered service in Korea''.
■ b. Revising the authority citation at the end of the section.

The addition and revision read as follows:

**§ 17.900 Definitions.**

* * * * *

*Veteran with covered service in Korea* for purposes of spina bifida means the same as defined at § 3.814(c)(2) of this title.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821, 1831)

■ 21. Amend § 17.901 by:
■ a. In paragraph (a), first sentence, removing ''Vietnam veteran's'' and adding, in its place, ''Vietnam veteran or veteran with covered service in Korea's'', and by removing ''with such health care as the Secretary determines is needed by the child for spina bifida'' and adding, in its place, ''with health care as the Secretary determines is needed''.
■ b. In paragraph (b), first sentence, removing ''spina bifida or other covered birth defects'' and adding, in its place, ''covered birth defects (other than spina bifida)''.
■ c. In paragraph (d)(3), removing ''300 S. Jackson Street. Denver, CO 80209'' and adding, in its place, ''3773 Cherry Creek Drive North, Denver, CO 80246''.
■ d. Revising paragraph (d)(4) and the authority citation at the end of the section.
■ e. Revising the Note at the end of the section.

The revisions read as follows:

**§ 17.901 Provisions of health care.**

* * * * *

(d) * * *

(4) The mailing address of the Health Administration Center for claims submitted pursuant to either paragraph (a) or (b) of this section is P.O. Box 469065, Denver, CO 80246–9065.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

**Note to § 17.901:** Under this program, beneficiaries with spina bifida will receive comprehensive care through the Department of Veterans Affairs. However, the health care benefits available under this section to children with other covered birth defects are not comprehensive, and VA will furnish them only health care services that are related to their covered birth defects. With respect to covered children suffering from spina bifida, VA is the exclusive payer for services paid under 17.900 through 17.905, regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. As to children with other covered birth defects, any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to the covered birth defects.

■ 22. Amend § 17.902 by:
■ a. In the first sentence of paragraph (a), removing ''benefits advisor'' and adding, in its place, ''customer service representative''.
■ b. In paragraph (a), removing the second sentence and adding two new sentences in its place.
■ c. Revising the authority citation at the end of the section.

The revisions read as follows:

**§ 17.902 Preauthorization.**

(a) * * * Authorization will only be given in spina bifida cases where there is a demonstrated medical need. In cases of other covered birth defects, authorization will only be given where there is a demonstrated medical need related to the covered birth defects.

* * *

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

■ 23. Amend § 17.903 by revising the authority citation at the end of the section to read as follows:

**§ 17.903 Payment.**

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

* * * * *

■ 24. Amend § 17.904 by revising the authority citation at the end of the section to read as follows:

**§ 17.904 Review and appeal process.**

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

* * * * *

■ 25. Amend § 17.905 by revising the authority citation at the end of the section to read as follows:

**§ 17.905 Medical records.**

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects

■ 26. The authority citation for part 21, subpart M, continues to read as follows:

**Authority:** 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

■ 27. Revise the heading of Subpart M as set forth above.

■ 28. Amend § 21.8010:

■ a. In paragraph (a) in the definition of ''Eligible child'' by removing ''3.814(c)(2)'' and adding, in its place, ''3.814(c)(3)''.

■ b. In paragraph (a) in the definition of ''Spina bifida'' by removing ''§ 3.814(c)(3)'', and adding, in its place, ''§ 3.814(c)(4)''.

■ c. In paragraph (a), by adding in alphabetical order, the definition of ''Veteran with covered service in Korea''.

■ d. Revising the authority citation for paragraph (a).

■ e. Revising the authority citation for paragraph (b).

The addition and revisions read as follows:

**§ 21.8010 Definitions and abbreviations.**

(a) * * *

*Veteran with covered service in Korea* means a veteran defined at § 3.814(c)(2) of this title.

* * * * *

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821, 1831)

(b) * * *

Authority: 38 U.S.C. 1804, 1811, 1814, 1831.

■ 29. Amend § 21.8012 by:

■ a. Revising the section heading.

■ b. Revising the authority citation at the end of the section.

The revisions read as follows:

**§ 21.8012 Vocational training program for certain children of Vietnam veterans and veterans with covered service in Korea—spina bifida and covered birth defects.**

* * * * *

(Authority: 38 U.S.C. 1804, 1812, 1814, 1821)

■ 30. Amend § 21.8014 by:

■ a. In paragraph (a) introductory text, first sentence, removing ''Vietnam veteran'', and adding, in its place, ''Vietnam veteran or veteran with covered service in Korea''.

■ b. In paragraph (a)(2), removing ''Vietnam veteran's'', and adding, in its place, ''Vietnam veteran or veteran with covered service in Korea's''.

■ c. Revising the authority citation for paragraph (a).

■ d. Revising the authority citation for paragraph (b).

The revisions read as follows:

**§ 21.8014 Application.**

(a) * * *

(Authority: 38 U.S.C. 1804(a), 1821, 1832, 5101)

(b) * * *

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1831)

■ 31. Amend § 21.8016 by revising the authority citation for paragraphs (a), (b), and (d) to read as follows:

**§ 21.8016 Nonduplication of benefits.**

(a) * * *

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(b) * * *

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

* * * * *

(d) * * *

(Authority: 38 U.S.C. 1804, 1814, 1834)

■ 32. Amend § 21.8022(b) by revising the authority citation at the end of the paragraph to read as follows:

**§ 21.8022 Entry and reentry.**

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1804, 1814, 1832)

[FR Doc. 2011–1342 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 179

### Operating Certain Railroad Tank Cars in Excess of 263,000 Pounds Gross Rail Load; Approval

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice regarding FRA approval for operating certain railroad tank cars in excess of 263,000 pounds gross rail load.

**SUMMARY:** On May 14, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule amending the Hazardous Materials Regulations (HMR) to incorporate provisions contained in several widely used or longstanding special permits that have an established safety record. 75 FR 27205 (Final Rule). The Final Rule titled, Hazardous Materials: Incorporation of Special Permits into Regulations, in part, amended the HMR to allow certain rail tank cars, transporting hazardous materials, to exceed the gross weight on rail limitation of 263,000 pounds upon approval of the Federal Railroad Administration (FRA). This document provides notice of FRA's approval pursuant to the Final Rule of the operation of certain tank cars in hazardous materials service that exceed 263,000 pounds and weigh up to 286,000 pounds gross rail load (GRL).

**FOR FURTHER INFORMATION CONTACT:** Mr. Karl Alexy (*Karl.Alexy@dot.gov* or (202) 493–6245) or Mr. William Schoonover (*William.Schoonover@dot.gov* or (202) 493–6229), Office of Railroad Safety Assurance and Compliance.

**SUPPLEMENTARY INFORMATION:** Prior to the Final Rule, Title 49 Code of Federal Regulations Section 179.13 of the HMR limited rail tank cars transporting hazardous materials to a maximum capacity of 34,500 gallons (130,597 L) and, with certain exceptions, a GRL of 263,000 pounds (119,295 kg).

As noted in the preamble to the Final Rule, PHMSA has granted several special permits allowing tank cars subject to the 263,000 pound GRL limit of § 179.13 to weigh up to 286,000 pounds (129,727 kg) GRL subject to certain conditions. The Final Rule amended § 179.13 to allow, upon approval by FRA's Associate Administrator for Railroad Safety, rail tank cars that are not transporting materials poisonous by inhalation (PIH) materials to exceed the 263,000 GRL

limit and weigh up to 286,000 pounds GRL without a special permit. Revised § 179.13(a) further provides that FRA may impose conditions on these approvals and the tank cars ''must be operated only under controlled interchange conditions agreed to by participating railroads.'' In adopting this amendment, PHMSA noted that FRA has already established safety-based guidelines for applications for authority to transport rail tank cars that exceed 263,000 pounds and rationalized that providing for FRA approval of these tank cars will simplify and expedite the regulatory process while at the same time maintain safety.

This document provides notice of FRA's approval pursuant to revised § 179.13(a) for the use in hazardous materials transportation of certain tank cars which exceed 263,000 pounds GRL and that may be loaded up to 286,000 pounds GRL, provided the cars are not loaded with PIH materials. Specifically, this document provides notice of FRA's approval pursuant to § 179.13(a) of (1) existing tank cars that are approved to operate in accordance with a PHMSA special permit allowing a GRL over 263,000 pounds; (2) cars that have been built, rebuilt, or otherwise modified for operation with a maximum GRL above 263,000 pounds, but not currently approved to operate in accordance with a special permit allowing the increased GRL; and (3) newly manufactured tank cars designed to operate with a GRL above 263,000 pounds.

Subject to the conditions specified below, railroad tank cars meeting the requirements in Sections II, III and IV, below, are approved, pursuant to § 179.13(a), to be loaded to a GRL of up to 286,000 pounds. No additional approval is required.

## I. Background

Since 1995, the Association of American Railroads (AAR) has maintained an industry standard in the form of an interchange rule related to freight cars (including hazardous materials tank cars) that weigh over 263,000 pounds GRL and up to 286,000 pounds GRL. That standard, AAR Standard S–259 (S–259)—Rail Car, 286,000-Lb Gross Weight, became effective January 1, 1995. In accordance with S–259, the design of a freight car's body must be based on a GRL of 286,000 pounds and the standard weight-related design loads for 100-ton cars used for fatigue-design criteria must be multiplied by 1.09, with the exception of longitudinal fatigue-design loads. S–259 also established minimum equipment requirements for brakes, bearings, axles, wheels, draft systems, springs and trucks. S–259, however, does not allow for the free interchange among carriers of cars meeting its requirements. In 2002, AAR adopted a revised industry standard related to railroad freight cars weighing over 263,000 pounds [1] GRL and weighing up to 286,000 pounds. This revised industry standard, AAR Standard S–286 (adopted 2002, revised 2003, 2005, 2006), Free/Unrestricted Interchange for 286,000 Lb Gross Rail Load Cars (S–286), is applicable to rail freight cars manufactured, rebuilt or modified on or after January 1, 2003, and is the existing industry standard for designing, building, and operating rail cars at gross weights over 263,000 pounds and up to 286,000 pounds. S–286 sets forth industry-tested practices for designing, building, and operating rail cars at gross weights over 263,000 pounds and up to 286,000 pounds. S–286 provides for the free interchange among carriers of cars built to meet its requirements.

As noted in the preamble to the Final Rule, FRA's guidelines, applicable to rail tank cars exceeding 263,000 pounds GRL, are found in a document titled, ''Maximizing Safety and Weight, A White Paper on 263K+ Tank Cars.'' This document is available for review on FRA's Web site at *http://www.fra.dot.gov/Pages/1800.shtml.* In sum, FRA's guidelines address the following topics: (1) Puncture resistance, (2) controlling longitudinal loading, (3) structural-worthiness, (4) track-worthiness, (5) service equipment, (6) service reliability and maintenance management, and (7) maximizing safety and weight.

Although FRA's guidelines address more aspects of tank car design than either of the AAR standards (including the puncture resistance of tank car tanks and the reliability of service equipment on the cars), existing tank cars built to meet the AAR standards have an excellent safety record. To date, special permits issued by PHMSA, related to GRL, in excess of 263,000 pounds GRL have required that the tank cars conform to either S–286 or S–259. In granting these special permits, PHMSA, with FRA's input, determined that in each instance, operating the tank cars with increased GRLs under the terms of the special permit would provide at least an equivalent level of safety as tank cars built to the minimum requirements of the HMR, but limited to a GRL of 263,000 pounds. In fact, in evaluating several special permits related to increased GRLs, PHMSA and FRA found that the commodities shipped in the tank cars were overpackaged.[2] Similarly, the agencies found that the specifications of the tank cars covered by other special permits indicate that the tanks were constructed of materials with mechanical properties superior to the minimum requirements of the HMR.

In the preamble to the Final Rule, PHMSA identified the following special permits as those that would be affected by the rule's revisions to § 179.13 and thus subject to FRA approval as far as the GRL limitations: DOT–SP 11241, 11654, 11803, 12423, 12561, 12613, 12768, 12858, 12903, 13856, 13936, 14004, 14038, 14442, 14505, 14520, 14570, and 14619. In addition, FRA notes that there are five other special permits related to tank cars with a GRL in excess of 263,000 pounds. These include DOT–SP 14167, 14173, 14207, 14398, and 14734.

Of the 23 special permits listed above, seven authorize the transportation of PIH materials in tank cars exceeding 263,000 pounds. These include special permits 12858 (ethylene oxide), 13856 (Division 6.1 HMs), 14442 (anhydrous ammonia), 14520 (chlorine), 14167 (chlorine), 14173 (ethylene oxide), and 14570 (titanium tetrachloride). Because the Final Rule revised § 179.13(a) to provide FRA approval authority for tank cars ''other than'' those that contain PIH materials, as the regulation is currently written, FRA cannot provide approval to continue these cars in PIH materials transportation without the existing special permits. However, as demonstrated by the discussion in the preamble of the Final Rule identifying the special permits that would be affected by the revisions to § 179.13, FRA believes that the inconsistency in the revised regulatory text is the result of a technical drafting error. Accordingly, FRA is working with PHMSA to develop and publish a correction to the Final Rule that would provide FRA authority to approve the loading of tank cars up to 286,000 pounds GRL when transporting any regulated hazardous material, including PIH materials.

All but three of the 16 special permits identified above that do not involve the transportation of PIH materials authorize the manufacturing, sale, and/or use of particular DOT-specification tank cars with a GRL of 286,000 pounds

[1] This AAR standard actually references tank cars with a ''GRL greater than 268,000 lbs,'' but FRA understands that the reference to ''268,000 lbs'' is a typographical error and the intent of the standard is to address tank cars with a GRL greater than 263,000 lbs.

[2] ''Overpackaged'' means the specification of the tank car was above the minimum requirements of the HMR. For example, a commodity that is allowed to be transported in a general purpose tank car is transported in a pressure car with a thicker tank shell.

for the transportation of particular hazardous materials identified in the permits. Special permits 11654 and 14619 authorize the transportation of certain Class 3 hazardous materials in DOT 105S tank cars with a maximum GRL of up to 270,000 pounds, while special permit 14207 authorizes the transportation of sodium hydroxide solution, a Class 8 hazardous material, in certain identified DOT 111A100W tank cars with a maximum GRL of up to 268,000 pounds.

The regulations from which grantees have been exempted in these special permits related to GRL include: § 173.26 (quantity limitations); and the GRL limit of 263,000 pounds in § 179.13. In five of these special permits (11241, 11654, 11803, 12613, and 14619), the grantees have been exempted from regulations not related to the GRL of the car, and these special permits must be maintained relative to these additional exemptions (*i.e.,* special permits must be maintained for relief from regulations other than from §§ 173.26 and 179.13).

Although FRA believes that tank cars, which have already been demonstrated to provide an equivalent level of safety to those specified by the HMR and existing tank cars built or retrofitted to similar standards, should be allowed to continue in HM transportation service, with the promulgation of a final rule designed to improve the crashworthiness and structural integrity of tank cars that transport highly hazardous materials such as PIH materials (HM–246; 74 FR 1770 (Jan. 13, 2009) (the ''Tank Car Rule'')), FRA notes that there is a widening performance gap in crashworthiness between the most robust tank cars designed to transport certain hazardous materials and general purpose tank cars designed to transport other hazardous materials. Accordingly, subject to certain conditions, FRA is providing its approval under § 179.13(a) to continue in service certain existing tank cars at GRLs in excess of 263,000 pounds and up to 286,000 pounds. At the same time, FRA is providing its approval for certain newly manufactured railroad tank cars to be loaded at an increased GRL of up to 286,000 pounds, provided certain additional conditions are met (*e.g.,* conditions related to the puncture resistance and reliability of the service equipment on the cars). Approval of newly constructed railroad tank cars meeting these additional requirements will, over time, narrow the performance gap between the most robust tank cars in hazardous materials service and other tank cars in hazardous materials service while research continues to develop and implement a crashworthiness performance standard as discussed in the Tank Car Rule. *See* 74 FR at 1771.

## II. FRA Approval of Existing Railroad Tank Cars Approved To Operate in Accordance With a PHMSA Special Permit Providing for a GRL Over 263,000 Pounds

Pursuant to § 179.13(a), the terms of existing special permits 11241, 11654, 11803, 12423, 12561, 12613, 12768, 12903, 13856, 13936, 14004, 14038, 14207, 14398, 14505, and 14734, related to railroad tank cars transporting hazardous materials other than PIH materials and currently approved to operate in accordance with a special permit providing for a GRL in excess of 263,000 pounds, are approved, subject to the following conditions:

1. Tank cars constructed, rebuilt, or otherwise modified to meet the requirements of S–259 shall be operated only in controlled interchange in accordance with that standard.

2. Tank cars constructed, rebuilt, or otherwise modified to meet the requirements of S–286 shall be permitted to operate in unrestricted interchange in accordance with that standard.

3. Tank car owners are responsible for determining which standard their tank cars meet. Tank car owners shall maintain records demonstrating compliance with that standard and make those records available to FRA upon request. Tank car owners shall also ensure that cars subject to this approval are appropriately marked in accordance with the HMR (*i.e.,* marked with the relevant tare weight) and that the records of the cars in AAR's Universal Machine Language Equipment Register (UMLER) clearly indicate the standard applicable to each car.

4. In accordance with S–286, if a tank car constructed in accordance with S–259 is rebuilt or otherwise modified to meet the requirements of S–286, that car shall be permitted to operate in unrestricted interchange. Tank car owners shall maintain records of the engineering analysis and upgrades performed that demonstrate compliance with S–286, and the tank car owner must file an R–1 with the AAR prior to the tank car being operated in unrestricted interchange. (*See* Appendix R of AAR's Manual of Standards and Recommended Practices, Section C–III, Specifications for Tank Cars (Specification M–1002)).

5. The GRL limit for tank cars subject to special permits 11654 and 14619 shall remain 270,000 pounds, and the GRL limit for tank cars subject to special permit 14207 shall remain 268,000 pounds; unless the cars are modified and a subsequent request for approval is made to FRA.

The ''terms'' of the special permits referred to in this approval are the ''packaging'' safety control measures specified in paragraph 7 of each special permit. For example, special permit 11241 authorizes the operation of DOT-specification 105J300W tank cars that meet certain technical specifications outlined in paragraph 7 of the permit and have a maximum GRL of up to 286,000 pounds. Consistent with the terms of that special permit, FRA's approval, per § 179.13(a), is limited to the identified DOT-specification cars meeting the technical specifications outlined in the permit. FRA's approval, however, is not limited to the specific commodities identified in the permit; instead, FRA's approval extends to the use of the identified tank cars with a GRL of up to 286,000 pounds for the transportation of any regulated hazardous material that would otherwise be permitted to be transported in that type of specification car. Copies of the relevant special permits will be maintained by the Hazardous Materials Division of FRA's Office of Safety Assurance and Compliance. Copies of the special permits may be obtained by contacting the individuals listed in the ''For Further Information Contact'' section above.

Each of the special permits listed above require the special permit (or SP) number be stenciled on the sides of tank cars operating under its terms. For tank cars operating under a special permit related only to GRL and subject to this approval, that stencil must be removed or obliterated at the car's first shopping event after the date of this approval, or no later than January 25, 2012, whichever occurs first.

## III. FRA Approval of Existing Railroad Tank Cars Built to S–286 or Rebuilt, or Otherwise Modified for Operation With a Maximum GRL Above 263,000 Pounds, but Not Currently Authorized To Operate at a GRL Above 263,000 Pounds

Existing tank cars built, rebuilt, or otherwise modified to meet the requirements of either S–259 or S–286 may be loaded to a GRL of up to 286,000 pounds subject to the following conditions:

1. Tank cars constructed, rebuilt, or otherwise modified to meet the requirements of S–259 shall be operated only in controlled interchange in accordance with that standard.

2. Tank cars constructed, rebuilt, or otherwise modified to meet the requirements of S–286 shall be permitted to operate in unrestricted

interchange in accordance with that standard.

3. Tank cars shall meet the following design specifications or be retrofitted as follows:

a. Jacketed and non-jacketed tank cars constructed with ASTM 516–70 steel and having only the minimum plate thickness required by §§ 179.101–1 and 179.201–1 (no additional thickness allowance) must be retrofitted with a 7-gauge steel jacket (constructed of A–572 steel).

b. Jacketed and non-jacketed tank cars constructed with ASTM B209 (Alloy 5052 and 5652) aluminum and having only the minimum plate thickness required by §§ 179.101–1 and 179.201–1 (no additional thickness allowance) must be retrofitted with a 7-gauge steel jacket (constructed of A–572 steel).

c. Jacketed and non-jacketed 111A100W tank cars constructed with TC–128 steel or an aluminum alloy, listed in § 179.200–7 (other than Alloy 5052 or 5652 listed in b above) and having at least the minimum plate thickness required by §§ 179.101–1 and 179.201–1, do not require retrofitting.

4. Tank car owners are responsible for determining which standard their tank cars meet and whether their cars meet the requirements of Condition 3 above. Tank car owners shall maintain records demonstrating compliance with the relevant AAR standard and the requirements of Condition 3. Tank car owners shall make those records available to FRA upon request. Tank car owners shall also ensure that cars subject to this approval are appropriately marked in accordance with the HMR (i.e., marked with the relevant tare weight) and that the records of the cars in AAR's UMLER clearly indicate the standard applicable to each car.

5. In accordance with S–286, if a tank car constructed in accordance with S–259 is rebuilt or otherwise modified to meet the requirements of S–286, that car shall be permitted to operate in unrestricted interchange. Tank car owners shall maintain records of the engineering analysis and upgrades performed that demonstrate compliance with S–286 and the tank car owner must file an R–1 with the AAR prior to the tank car being operated in unrestricted interchange. (*See* Appendix R of AAR's Manual of Standards and Recommended Practices, Section C–III, Specifications for Tank Cars (Specification M–1002)).

## IV. FRA Approval of Maximum GRL of 286,000 Pounds for Newly Manufactured Railroad Tank Cars

Tank cars manufactured after January 25, 2011 may be loaded to a maximum GRL of 286,000 pounds provided the tank cars meet the following criteria:

1. Tank cars must be constructed in accordance with S–286.

2. Puncture resistance:

a. Tank car tanks must be constructed of TC–128 steel (normalized).

b. A jacketed tank car must be equipped with an 11-gauge jacket constructed of A–572 steel and the shell and head of the tank must meet the minimum plate thickness required by §§ 179.101–1 and 179.201–1. Alternate thicknesses, based on material properties indicated in the notes of § 179.101–1, are not approved.

c. For a non-jacketed tank car, the shell and head of the tank must meet the minimum plate thickness of that required by §§ 179.101–1 and 179.201–1. Alternate thicknesses, based on material properties indicated in the notes of § 179.101–1, are not approved.

3. Service Equipment:

a. Top fittings protection must meet the requirements of § 10.2 of Appendix E to Specification M–1002 for general purpose tank cars.

b. A tank car must be equipped with a reclosing pressure relief device.

The minimum plate thicknesses specified in paragraph 2 above were determined in the following manner. Using finite elements analysis of side impact simulations, a relationship between the puncture velocity and shell thickness was derived. Factors affecting puncture velocity were incorporated into the analysis, including gross weight, ultimate tensile strength of the shell material, tank and jacket thickness, tank diameter, and internal pressure and indenter size (which for this comparative analysis was assumed to be 12'' x 12''). The puncture velocities of representative baseline tank cars were calculated. The baseline tank cars were grouped according to the specified thickness requirements of the HMR. Additionally, the diameter of each grouping was based on a survey of tank car specifications. The specification grouping, respective diameters, thicknesses, materials of construction, and working pressures were as follows:

| Tank car specification | Minimum plate thickness (in) | Material of construction | Diameter (in) | Working pressure (psig) |
|---|---|---|---|---|
| 111A100W1 | 7/16 | A516–70 | 94 | 50 |
| 105A200W | 9/16 | A516–70 | 100 | 100 |
| 105A300W | 11/16 | A516–70 | 117 | 100 |
| 112A340W | 11/16 | A516–70 | 117 | 100 |
| 111A60ALW1 | 1/2 | ASTM B209 (Alloy 5052) | 9 | 50 |
| 111A100ALW1 | 5/8 | ASTM B209 (Alloy 5052) | 94 | 50 |

Through an iterative process, the thickness of a tank car with similar characteristics, with the exception of a GRL of 286,000 pounds, was increased until the puncture velocity was the same as that for the 263,000 GRL tank car. In a similar manner, the equivalent single-layer thickness was determined for tank cars not equipped with a jacket. The same analysis was not performed on the head because § 2.5 of AAR's Specification M–1002, requires the tank cars to be equipped with ½'' thick head shields.

Failure of a tank car owner to comply with any condition of the above approvals will deprive the owner of the benefit of the approval and, in any such instances, FRA reserves the right to take appropriate enforcement action, which may result in FRA revoking such approval. If a party desires to manufacture or use a tank car not meeting the above criteria, FRA will consider such alternative designs upon application in accordance with § 179.13.

Issued in Washington, DC on January 19, 2011.

**Jo Strang,**

*Associate Administrator for Railroad Safety/ Chief Safety Officer.*

[FR Doc. 2011–1414 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–06–P**

# Proposed Rules

Federal Register
Vol. 76, No. 16
Tuesday, January 25, 2011

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 945

**[Doc. No. AMS–FV–10–0109; FV11–945–1]**

### Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Continuance Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible producers of Irish potatoes in certain designated counties in Idaho, and Malheur County, Oregon, to determine whether they favor continuance of the marketing order regulating the handling of Irish potatoes grown in the production area.

**DATES:** The referendum will be conducted from March 5 to March 18, 2011. To vote in this referendum, producers must have produced Irish potatoes for the fresh market within the designated production area in Idaho, or Malheur County, Oregon, during the period August 1, 2009, through July 31, 2010.

**ADDRESSES:** Copies of the marketing order may be obtained from the office of the referendum agents at 805 SW Broadway, Suite 930, Portland, OR 97205, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 805 SW Broadway, Suite 930, Portland, OR 97205; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order No. 945 (7 CFR part 945), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted from March 5 to March 18, 2011, among eligible Irish potato producers in the production area. Only producers that were engaged in the production of Irish potatoes for the fresh market in Idaho, and Malheur County, Oregon, during the period of August 1, 2009, through July 31, 2010, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether producers favor continuation of marketing order programs. USDA would consider termination of the order if less than two-thirds of producers voting in the referendum and producers of less than two-thirds of the volume of Irish potatoes represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178—Vegetable and Specialty Crop Marketing Orders. It has been estimated that it will take an average of 20 minutes for each of the approximately 990 producers of Irish potatoes in Idaho and Malheur County, Oregon, to cast a ballot. Participation is voluntary. Ballots postmarked after March 18, 2011, will not be included in the vote tabulation.

Barry Broadbent and Gary Olson of the Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400–900.407).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents, or from their appointees.

**List of Subjects in 7 CFR Part 945**

Irish potatoes, Marketing agreements, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601–674.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1424 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 989

**[Doc. No. AMS–FV–10–0090; FV10–989–3 PR]**

### Raisins Produced From Grapes Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase the assessment rate established for the Raisin Administrative Committee (committee) for the 2010–11 and subsequent crop years from $7.50 to $14.00 per ton of free tonnage raisins acquired by handlers and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The committee locally administers the marketing order which regulates the handling of California raisins produced from grapes grown in California. Assessments upon raisin handlers are used by the committee to fund reasonable and necessary expenses of

the program. The 2010–11 crop year began August 1 and ends July 31. No volume regulation will be implemented for the 2010–11 crop year, and no reserve pool will be established for this crop. Some committee expenses usually covered by reserve pool revenues must therefore be covered by handler assessments, necessitating an increased assessment rate. The proposed $14.00 per ton assessment would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by February 4, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Terry.Vawter@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable raisins beginning on August 1, 2010, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the committee for the 2010–11 and subsequent crop years from $7.50 to $14.00 per ton of free tonnage California raisins acquired by handlers and reserve raisins tonnage raisins released or sold to handlers for use in free tonnage outlets.

Sections 989.79 and 989.80, respectively, of the order provide authority for the committee, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California raisins. They are familiar with the committee's needs and with costs for goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Section 989.79 also provides authority for the committee to formulate an annual budget of expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the committee. A certain percentage of each year's raisin crop may be held in a reserve pool during years when volume regulation is implemented to help stabilize raisin supplies and prices. The remaining ''free'' percentage may be sold by handlers to any market. Reserve raisins are disposed of through various programs authorized under the order. Reserve pool expenses are deducted from proceeds obtained from the sale of reserve raisins, as are costs to cover the Export Replacement Offer (ERO) program, which supports handler exports in various foreign markets. Net proceeds are returned to the pool's equity holders, primarily producers.

**The Committee Formulates Two Budgets Initially**

Prior to each crop year, the committee formulates two distinct budgets: one which envisions volume regulation during the upcoming season, and another which does not. This is a practical contingency plan, since the crop year begins several months prior to the committee's consideration of a recommendation for volume regulation, which cannot be made before the crop's size can be estimated.

When volume regulation is recommended, the committee adopts an administrative budget funded by handler assessments, and a reserve pool budget funded by the current year's reserve pool. Thus, some committee costs, some variable and some fixed, may be shared by the two revenue sources or allocated to one or the other. Variable costs solely attributed to the reserve budget include such expenses as insurance policies for committee-owned raisin bins and on stacks of reserve raisins, and reserve raisin hauling costs. Variable costs which are attributable solely to the administrative budget include such expenses as costs for committee and staff travel, or software and programming costs, etc. Because of the nature of these variable expenses, they can be changed or redirected without significant impact on either budget, if necessary.

On the other hand, fixed costs are less flexible, and, thus, cannot be readily changed from one accounting period to another. Because these are ''sunk'' costs, like rent, salaries and other related personnel costs, utilities, etc., they may be attributable to both the reserve and the administrative budget, depending on the nature of the expense. In the short

term of one crop year, these fixed costs generally remain fixed costs.

When volume regulation is not implemented, the committee funds program operations with an administrative budget funded only from handler assessments, where some expenses associated with a reserve pool are eliminated or reduced from the combined administrative and reserve program budget.

**The Committee Recommended Two Budgets Initially**

The committee initially met on July 22, 2010, and recommended two 2010–11 crop year budget scenarios to accommodate both situations, because it was not known at that time whether volume regulations would be implemented.

The first budget scenario recommended was premised on the assumption that volume regulation would be implemented. Under this scenario, the committee recommended an administrative budget of expenses totaling $2,245,900, and a reserve pool budget of expenses totaling $2,530,700. The assessment rate would remain unchanged at $7.50 per ton. The assessment rate applied to the estimated acquisitions of raisins by handlers of 330,640 tons would provide adequate revenue to fund the shared administrative and reserve budgets (salaries, administrative expenses, research, compliance activities, industry outreach), and those costs exclusively funded by the reserve budget, including: insurance on raisin bins and reserve raisins, hauling of reserve raisins and reserve raisin bins, as well as bin repair and maintenance. Total expenses of this budget scenario equal $4,776,600, not including $233,900 set aside as a financial reserve, bringing the total budget to $5,010,500.

The second budget scenario recommended was based on the premise that volume regulation would not be implemented for the 2010–11 season. Under this scenario, various expenses typically split between the reserve pool budget and the administrative budget would be funded by the administrative budget because the activities continue, even in the absence of a reserve program. These expenses include salaries, bin maintenance costs, export consultants hired to assist the committee in administering USDA's Market Access Program (MAP) funds, etc. However, it should be noted that even some salaries would be subject to reduction or elimination if no reserve program were in place after the 2010–2011 crop year. In the long term, even fixed costs such as these become variable costs.

In addition, some expense categories would be eliminated in the absence of a reserve program. These expenses include: insurance for bins and reserve raisins, reserve raisin hauling, and the committee's Market Incentive Program (MIP) and the Industry Marketing Promotion Fund (IMPF).

Other expenses which have been reduced include: travel for committee and staff members, software and programming costs, and generic marketing efforts in foreign countries.

The administrative budget expenses total $4,423,500 not including a smaller financial reserve of $205,460, bringing the total administrative budget to $4,628,960; necessitating a higher assessment rate of $14.00 per ton to cover the proposed expenses, as unanimously recommended by the committee.

**Committee Consideration of Volume Regulation**

The committee met on October 5, 2010, and determined that volume regulation is not warranted for the 2010–11 crop year because the calculated volume regulation formula resulted in 100 percent free tonnage and zero percent reserve tonnage. Without volume regulation, the committee's relevant recommendation is the July 22, 2010, proposed administrative budget of $4,628,960, along with an increased assessment rate of $14.00 per ton.

In developing this budget, the committee reviewed and identified those expenses that were considered reasonable and necessary to continue operation of the raisin marketing order program. As noted previously, several costs normally associated with administering a reserve pool would be eliminated such as insurance coverage ($98,700); raisin hauling costs ($65,000), and 2011–2012 MIP/IMPF costs (typically $4.3 million each year). These costs would be unnecessary in the absence of a reserve pool.

Some expenses traditionally split between the administrative and reserve pool budgets would be reduced and funded through the administrative budget. For example, total office and field staff travel related to reserve and administrative activities, budgeted at $66,200 ($33,100 allocated to the reserve budget and an additional $33,100 allocated to the administrative budget), would be reduced to $48,000. Other reduced expenses include: Reduction in costs for outside counsel approved by USDA for personnel issues from $8,000 to $6,000; travel for foreign committee representatives from $65,000 to $40,000; staff travel for generic foreign market relations from $70,000 to $40,000; and MAP trade activity from $440,000 to $400,000. In all, the committee has proposed eliminating or reducing expenses by a total of $353,100.

Other costs usually split between the reserve pool and administrative budgets that would be funded by the administrative budget include: Salaries and related employment costs, administration, generic marketing efforts, research, compliance activities, and industry outreach. These costs remain the same regardless of whether there is a reserve pool, as they are necessary to continue administration of the program.

The major expenditures recommended by the committee for the 2010–11 crop year include salaries and employee-related costs, administration costs, compliance activities, research and studies, and costs for operation and maintenance of the generic marketing programs.

The committee recommended $1,745,000 to cover salaries for all 18 committee employees, vacation accruals, payroll taxes, unemployment compensation, retirement contributions, employee benefits, employment costs, staff training and travel; insurance, and health insurance. Administrative expenses of $925,700 include expenses for rent, utilities, postage, office supplies, repairs and maintenance, memberships and subscriptions, committee training, consultants, audits, equipment leases and depreciation, committee and staff travel, committee mileage reimbursements, meeting expenses, bank charges, software and programming, and empty raisin bin hauling and maintenance. Costs for order compliance activities, not including compliance staff salaries, are anticipated to be $90,000; and research and studies, especially the cost for the five-year review of its marketing programs mandated by the Federal Agricultural Improvement and Reform (FAIR) Act of 1996, are anticipated to be $140,000. Costs for industry outreach are estimated to be $15,000. Costs for outside counsel approved by USDA for personnel issues are estimated to be $6,000. Generic costs for market maintenance and travel costs total $1,676,000, and include costs for foreign administration of MAP funds, travel for industry representatives in foreign countries—not including Mexico or Canada, which are considered part of the domestic market—and export consulting costs associated with MAP fund administration.

The $14.00 per ton assessment rate recommended by the committee was derived by dividing the $4,628,960 recommended budget ($4,423,500 anticipated expenses plus a financial reserve of $205,460) by an estimated 330,640 tons of assessable raisins. Sufficient income should be generated at the higher assessment rate for the committee to meet its anticipated and unanimously-recommended expenses. Due to a relatively small crop over which to spread the assessment rate, the recommended rate of $14.00 per ton is higher than recent assessment rates, and is enough to meet the anticipated expenses and maintain a small financial reserve. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The committee's 2010–11 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA, in accordance with USDA's program oversight responsibilities.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 3,000 producers of California raisins and approximately 28 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000, and defines small agricultural service firms as those whose annual receipts are less than $7,000,000.

Based upon shipment data and other information provided by the committee, it may be concluded that a majority of producers and approximately 18 handlers of California raisins may be classified as small entities.

This rule would increase the assessment rate established for the committee and collected from handlers for the 2010–11 and subsequent crop years from $7.50 to $14.00 per ton of assessable raisins acquired by handlers. The committee determined that volume regulation was not warranted for the 2010–11 crop year because the trade demand calculated under the order is currently higher than the crop estimate. Thus, given the current balance between supply and demand, the committee unanimously determined that volume regulation was not warranted for the 2010–2011 crop year.

When volume regulation is in effect, the committee establishes a budget allocated between administrative expenses funded by handler assessments, and expenses incurred in connection with a reserve pool, funded from the sale of reserve pool raisins for free tonnage use. As noted earlier, costs which can be associated directly with the reserve pool, such as insurance on bins and reserve raisins, can readily be allocated to the reserve pool portion of the budget. Other costs, such as salaries or administrative expenses, represent expenditures which have been jointly allocated between the two portions of the budget, because these expenses and staff's time are shared between administrative and pool operations.

When no volume regulation is in effect during a crop year, there is no reserve pool budget for that crop year. However, as noted previously, the committee continues to incur fixed costs associated with salaries and administering the marketing order program, including expenses for their part of the MAP grant.

The committee reviewed and identified the expenses that would be reasonable and necessary to continue program operations without a reserve pool in effect during the 2010–11 crop year. As illustrated earlier, some expenses that are typically split between the administrative and reserve pool budgets have been allocated to the administrative budget, some expenses were reduced, and some expenses have been eliminated.

Each reserve pool maintains a separate identity from any other pools which may be in existence. For example, currently the 2008–09 and 2009–10 pools are still open, largely due to the lag time between the opening of the pool and the receipt of all documents applicable to that pool. Under the MIP/IMPF programs, for example, importers have two years in which to claim financial incentives from the pools. Thus, reserve pools cannot close until at least two years have elapsed.

The resulting recommended administrative budget includes expenses of $4,423,500 and a financial reserve of $205,460, for a total budget of $4,628,960 for the 2010–11 crop year. This represents an overall decrease from the 2009–10 combined administrative and reserve pool budgets, which totaled $5,463,975. The financial reserve provides a safety net to cover unexpected expenses and opportunities that present themselves during the 2010–2011 crop year.

The quantity of assessable raisins for 2010–11 crop year is estimated to be 330,640 tons. The $14.00 per ton assessment rate unanimously recommended by the committee was derived by dividing the $4,628,960 anticipated expenses, which includes a financial reserve of $205,460, by an estimated 330,640 tons of assessable raisins. Sufficient income should be generated at the higher assessment rate for the committee to meet its anticipated expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Audit, and Administrative Issues Subcommittees. Alternate spending levels were discussed by the Audit Subcommittee, which met on July 22, 2010, to review the committee's financial condition and consider preliminary budgets. The committee was aware that the current raisin supply and demand were relatively balanced, and that volume regulations might not be warranted for the 2010–11 crop. Therefore, the committee developed two alternative budget and assessment rate recommendations to accommodate a scenario with volume regulation and

another scenario without volume regulation. If volume regulation were to be implemented, the assessment rate would remain at $7.50 per ton. If volume regulation were not to be implemented, some costs typically allocated to a reserve pool budget would be absorbed by the administrative budget, thus necessitating an increased assessment rate to $14.00 per ton. The committee unanimously approved these alternative budget and assessment recommendations on July 22, 2010.

The committee met again on October 5, 2010, and determined that volume regulation was not warranted for the 2010–11 season. This triggered recommendation of the committee's proposal for an administrative budget of $4,628,960 and an assessment rate of $14.00 per ton, since the current assessment rate of $7.50 would not provide enough funds to cover anticipated expenses of $4,423,500.

A review of statistical data on the California raisin industry indicates that assessment revenue has consistently been less than one percent of grower revenue in recent years. A minimum grower price of $1,500 per ton of raisins for the 2010–11 crop year has been announced by the Raisin Bargaining Association. If this price is realized, assessment revenue would continue to represent less than one percent of grower revenue in the 2010–11 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action would increase the assessment obligation imposed on handlers. While increased assessments impose additional costs on handlers regulated under the order, the rates are uniform on all handlers, and proportional to the size of their businesses. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the Audit Subcommittee and the full committee's meetings were widely publicized throughout the California raisin industry and all interested persons were invited to attend the meetings and encouraged to participate in committee deliberations on all issues. Like all subcommittee and committee meetings, the July 22 and October 5, 2010, meetings were public meetings, and all entities, both large and small, were able to express views on this issue, if they chose to do so. Based upon the discussions and the unanimous vote by the committee, the increased assessment is reasonable and necessary to maintain the program. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2010–11 crop year began on August 1, 2010, and the order requires the rate of assessments for each crop year to apply to all assessable raisins handled during the crop year; (2) the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis, and (3) handlers are aware of this action, which was unanimously recommended by the committee at a public meeting.

### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 989.347 is revised to read as follows:

### § 989.347 Assessment rate.

On and after August 1, 2010, an assessment rate of $14.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1427 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF ENERGY

## 10 CFR Part 835

**[Docket No. HS–RM–09–835]**

**RIN 1901–AA–95**

## Occupational Radiation Protection; Revision

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule and opportunity for public comment.

**SUMMARY:** The Department of Energy (DOE) proposes to revise the values in an appendix to its Occupational Radiation Protection requirements. The derived air concentration values for air immersion are calculated using several parameters. One of these, exposure time, is better represented by the hours in the workday, rather than the hours in a calendar day, and is therefore used in the revised calculations.

**DATES:** Public comments on the proposed revisions must be received on or before February 24, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. HS–RM–09–835 and/or RIN 1901–AA–95, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Judy.Foulke@hq.doe.gov.* Include Docket Number HS–RM–09–835 and/or RIN 1901–AA–95 in the subject line of the message.
- *Mail:* Dr. Judith D. Foulke, Office of Worker Safety and Health Policy (HS–11), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Judith Foulke, (301) 903–5865, *e-mail: Judy.Foulke@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The requirements in title 10, Code of Federal Regulations, part 835 (10 CFR part 835), *Occupational Radiation Protection,* are designed to protect the health and safety of workers at DOE facilities. One situation that must be addressed is the exposure of workers to radioactive material dispersed in the air.

Based on calculations involving doses to the organs of the body, levels of contamination in the air that will not cause the dose limits for workers to be exceeded are established for specified radionuclides. These values are given in appendix C.

DOE first published, a final rule on December 14, 1993, (58 FR 65485), amending 10 CFR part 835. In the June 8, 2007, (72 FR 31903) amendment to part 835, DOE revised the values in appendix C to part 835, *Derived Air Concentration (DAC) for Workers from External Exposure during Immersion in a Cloud of Airborne Radioactive Material.* The calculations done for the 2007 amendment were based on a 24-hour day. However, to be consistent with other occupational exposure scenarios, such as those used in developing the appendix A DACs, an 8-hour per day exposure scenario is more reasonable.

**Need for Revisions**

This proposed rule revises the values in appendix C to part 835, *Derived Air Concentration (DAC) for Workers from External Exposure during Immersion in a Cloud of Airborne Radioactive Material.*

**List of Subjects in 10 CFR Part 835**

Federal buildings and facilities, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Nuclear safety, Occupational safety and health, Radiation protection, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on January 11, 2011.

**Glenn S. Podonsky,**

*Chief Health, Safety and Security Officer, Office of Health, Safety and Security.*

Accordingly, for the reasons set forth in the preamble, part 835 of Chapter III of 10 CFR is proposed to be amended as set forth below:

## PART 835—OCCUPATIONAL RADIATION PROTECTION

1. The authority citation for part 835 continues to read as follows:

**Authority:** 42 U.S.C. 2201, 7191; 50 U.S.C. 2410.

2. Amend appendix C to part 835, by revising the table to read as follows:

**Appendix C to Part 835—Derived Air Concentration (DAC) for Workers From External Exposure During Immersion in a Cloud of Airborne Radioactive Material**

* * * * *

AIR IMMERSION DAC

| Radionuclide | Half-Life | (μCi/mL) | ($Bq/m^3$) |
|---|---|---|---|
| Ar–37 | 35.02 d | 3E+00 | 1E+11 |
| Ar–39 | 269 yr | 1E–03 | 5E+07 |
| Ar–41 | 1.827 h | 3E–06 | 1E+05 |
| Kr–74 | 11.5 min | 3E–06 | 1E+05 |
| Kr–76 | 14.8 h | 1E–05 | 3E+05 |
| Kr–77 | 74.7 h | 4E–06 | 1E+05 |
| Kr–79 | 35.04 h | 1E–05 | 6E+05 |
| Kr–81 | 2.1E+05 yr | 7E–04 | 2E+07 |
| Kr–83m | 1.83 h | 7E–02 | 2E+09 |
| Kr–85 | 10.72 yr | 7E–04 | 2E+07 |
| Kr–85m | 4.48 h | 2E–05 | 1E+06 |
| Kr–87 | 76.3 min | 4E–06 | 1E+05 |
| Kr–88 | 2.84 h | 1E–06 | 7E+04 |
| Xe–120 | 40.0 min | 1E–05 | 4E+05 |
| Xe–121 | 40.1 min | 2E–06 | 8E+04 |
| Xe–122 | 20.1 h | 8E–05 | 3E+06 |
| Xe–123 | 2.14 h | 6E–06 | 2E+05 |
| Xe–125 | 16.8 h | 1E–05 | 6E+05 |
| Xe–127 | 36.406 d | 1E–05 | 6E+05 |
| Xe–129m | 8.89 d | 2E–04 | 7E+06 |
| Xe–131m | 11.84 d | 5E–04 | 1E+07 |
| Xe–133 | 5.245 d | 1E–04 | 5E+06 |
| Xe–133m | 2.19 d | 1E–04 | 5E+06 |
| Xe–135 | 9.11 h | 1E–05 | 6E+05 |
| Xe–135m | 15.36 min | 1E–05 | 3E+05 |
| Xe–138 | 14.13 min | 3E–06 | 1E+05 |

* * * * *

[FR Doc. 2011–1500 Filed 1–24–11; 8:45 am]

BILLING CODE 6450–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2011–0030; Directorate Identifier 2009–NM–183–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 and A310 Series Airplanes, and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede three existing ADs. 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:

The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently listed in Airbus ALI Documents, which are referenced in the A300, A310, and A300–600 Airworthiness Limitations Section (ALS) Part 2. Airbus has recently revised the ALI Documents, which have been approved by the European Aviation Safety Agency (EASA).

* * * * *

The actions contained in these revised documents, which introduce more restrictive maintenance requirements and/or airworthiness limitations, have been identified as mandatory actions for continued airworthiness. * * *

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. 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 March 11, 2011.

**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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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 Operations office 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 Operations 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:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**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–2011–0030; Directorate Identifier 2009–NM–183–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 based on 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

On February 6, 2007, we issued AD 2007–04–11, Amendment 39–14943 (72 FR 8604, February 27, 2007). That AD required actions intended to address an unsafe condition on Airbus Model A300 B2 and B4 series airplanes.

On September 19, 2007, we issued AD 2007–20–03, Amendment 39–15213 (72 FR 54536, September 26, 2007). That AD required actions intended to address an unsafe condition on Airbus Model A300–600 series airplanes.

On November 23, 2007, we issued AD 2007–25–02, Amendment 39–15283 (72 FR 69612, December 10, 2007). That AD required actions intended to address an unsafe condition on Airbus Model A310 series airplanes.

Since we issued ADs 2007–04–11, 2007–20–03, and 2007–25–02, we have determined that the airworthiness limitations for these airplanes must be updated in order to adequately address the unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0155, dated July 17, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently listed in Airbus ALI Documents, which are referenced in the A300, A310, and A300–600 Airworthiness Limitations Section (ALS) Part 2. Airbus has recently revised the ALI Documents, which have been approved by the European Aviation Safety Agency (EASA).

—Airbus A300 ALI Document issue 04.
—Airbus A310 ALI Document issue 07 and
—Airbus A300–600 ALI Document issue 12

The actions contained in these revised documents, which introduce more restrictive maintenance requirements and/or airworthiness limitations, have been identified as mandatory actions for continued airworthiness. EASA issued ADs 2006–0071, 2006–0260, and 2006–0374 [which correspond to FAA ADs 2007–04–11, 2007–25–02, and 2007–20–03] to require compliance with the maintenance requirements and associated airworthiness limitations defined in previous issues of these Airbus ALI documents.

For the reason described above, [the] EASA AD supersedes existing ADs 2006–0071, 2006–0260, and 2006–0374 and requires an update to the approved aircraft maintenance

programme and compliance with the maintenance requirements and associated airworthiness limitations defined in the Airbus ALI Documents listed above.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. The required actions include revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new and revised structural inspections and inspection intervals. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Airbus has issued A300–600 Airworthiness Limitation Items (ALI) Document AI/SE–M2/95A.1310/07, Issue 12, dated June 2008; A300 ALI Document AI/SE–M2/95A.1308/07, Issue 4, dated June 2008; and A310 ALI Document, AI/SE–M2/95A.1309/07, Issue 7, dated June 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

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

We might also have 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**

Based on the service information, we estimate that this proposed AD would affect about 206 products of U.S. registry.

The actions that are required by AD 2007–04–11, AD 2007–20–03, and AD 2007–25–02, and retained in this proposed AD, take about 1 work hour per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of those actions on U.S. operators to be $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new 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 $17,510, or $85 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 removing Amendment 39–14943 (72 FR 8604, February 27, 2007); Amendment 39–15213 (72 FR 54536, September 26, 2007); and Amendment 39–15283 (72 FR 69612, December 10, 2007); and adding the following new AD:

**Airbus:** Docket No. FAA–2011–0030; Directorate Identifier 2009–NM–183–AD.

**Comments Due Date**

(a) We must receive comments by March 11, 2011.

**Affected ADs**

(b) This AD supersedes AD 2007–04–11, Amendment 39–14943; AD 2007–20–03, Amendment 39–15213; and AD 2007–25–02, Amendment 39–15283.

**Applicability**

(c) This AD applies to all Airbus model airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Model A300 B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, and B4–203 airplanes.

(2) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(3) Models A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according

to paragraph (t)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

**Subject**

(d) Air Transport Association (ATA) of America Codes 52: Doors; 53: Fuselage; 54: Nacelles/pylons; 55: Stabilizers; 57: Wings; and 71: Powerplant (for Model A300–600 only).

**Reason**

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

The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently listed in Airbus ALI Documents, which are referenced in the A300, A310, and A300–600 Airworthiness Limitations Section (ALS) Part 2. Airbus has recently revised the ALI Documents, which have been approved by the European Aviation Safety Agency (EASA).

* * * * *

The actions contained in these revised documents, which introduce more restrictive maintenance requirements and/or airworthiness limitations, have been identified as mandatory actions for continued airworthiness. * * *

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity 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.

**Restatement of Certain Requirements of AD 2007–04–11**

(g) Within one year after August 9, 1996 (the effective date of AD 96–13–11), replace the revision of the maintenance program with the inspections, inspection intervals, repairs, and replacements defined in ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), Revision 2, dated June 1994 (''Revision 2 of the SSID''). Accomplish the actions specified in the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID, at the times specified in those service bulletins. The actions are to be accomplished in accordance with those service bulletins. Accomplishing the initial ALI tasks required by paragraph(s) of this AD terminates the actions required by this paragraph.

(1) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID: Accomplish the actions specified in those service bulletins within the grace period specified in that service bulletin. The grace period is to be measured from August 9, 1996.

(2) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID, and a grace period is not specified in that service bulletin: Accomplish the actions specified in that service bulletin within 1,500 flight cycles after August 9, 1996.

**Revision of the Maintenance Inspection Program**

(h) For airplanes identified in paragraph (c)(1) of this AD: Within 12 months after April 3, 2007 (the effective date of AD 2007–04–11), replace the revision of the maintenance program required by paragraph (g) of this AD with the supplemental structural inspections, inspection intervals, and repairs defined in Airbus A300 Airworthiness Limitation Items (ALI) Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 Temporary Revision (TR) 3.1, dated April 2006 (''Issue 3 of the ALI''). Accomplish the actions specified in Issue 3 of the ALI at the times specified in that ALI, except as provided by paragraph (i) of this AD. The actions must be accomplished in accordance with Issue 3 of the ALI. Accomplishing the initial ALI tasks required by paragraph (s) of this AD terminates the actions required by this paragraph.

(i) For airplanes identified in paragraph (c)(1) of this AD that have exceeded the threshold or intervals specified in the Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005 (''Issue 3 of the ALI''), for the application tolerance on the first interval for new and revised requirements and have exceeded 50 percent of the intervals specified in sections D and E of Issue 3 of the ALI: Do the actions within 6 months after April 3, 2007.

**Corrective Actions**

(j) Damaged, cracked, or corroded structure detected during any inspection done in accordance with the Airbus A300Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005 (''Issue 3 of the ALI''), must be repaired, before further flight, in accordance with Issue 3 of the ALI, except as provided by paragraph (k) of this AD; or other data meeting the certification basis of the airplane which is approved by the Manager, International Branch, ANM–116; or by the European Aviation Safety Agency (EASA) (or its delegated agent).

(k) Where the Airbus A300Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, specifies contacting Airbus for appropriate action: Before further flight, repair the damaged, cracked, or corroded structure using a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

**No Fleet Sampling**

(l) Although Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, specifies to do a ''Sampling Concept'' in section B, this AD prohibits the use of such a sampling program and requires all affected airplanes of the fleet to be inspected.

**No Reporting**

(m) Although Airbus A300 Airworthiness Limitation Items Document SEM2/95A.1090/05, Issue 3, dated September 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**Restatement of Requirements of AD 2007–20–03**

**Actions and Compliance**

(n) For airplanes identified in paragraph (c)(3) of this AD: Within 3 months after October 31, 2007 (the effective date AD 2007–20–03), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300–600 Airworthiness Limitation Items (ALI) Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006 (''Issue 11 of the ALI''). The tolerance (grace period) for compliance (specified in paragraph 2 of Section B—Program Rules) with Issue 11 of the ALI is within 2,000 flight cycles after October 31, 2007, provided that none of the following is exceeded. Accomplishing the initial ALI tasks required by paragraph (s) of this AD terminates the actions required by this paragraph.

(1) Thresholds or intervals in the operator's current approved maintenance schedule that are taken from a previous ALI issue, if existing, and are higher than or equal to those given in Issue 11 of the ALI.

(2) 8 months after October 31, 2007.

(3) 50 percent of the intervals given in Issue 11 of the ALI.

(4) Any application tolerance given in the task description of Issue 11 of the ALI.

**Restatement of Requirements of AD 2007–25–02**

**Revision of the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA)**

(o) For airplanes identified in paragraph (c)(2) of this AD: Within 3 months after January 14, 2008 (the effective date of AD 2007–25–02), do the actions specified in paragraphs (o)(1) and (o)(2) of this AD. Accomplishing the initial ALI tasks required by paragraph (s) of this AD terminates the actions required by this paragraph.

(1) Revise the ALS of the ICA to incorporate the structural inspections and inspection intervals defined in Airbus A310 Airworthiness Limitations Items (ALI) Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006 (approved by the European Aviation Safety Agency (EASA) on May 31, 2006). Accomplish the actions specified in Issue 6 of the ALI at the times specified in that ALI, except as provided by paragraph (p) of this AD. Thereafter, except as provided by paragraphs (o)(2) and (t)(1) of this AD, no alternative structural inspection intervals may be approved. The actions specified in Issue 6 of the ALI must be accomplished in accordance with Issue 6 of the ALI.

(2) Revise the ALS of the ICA to incorporate the new and revised structural inspections and inspection intervals defined in Airbus Temporary Revision (TR) 6.1, dated November 2006 (approved by the EASA on December 12, 2006), to Issue 6 of the ALI. Thereafter, except as provided by paragraph

(t)(1) of this AD, no alternative structural inspection intervals may be approved.

**Exception to Issue 6 of the ALI**

(p) The tolerance (grace period) for compliance with Airbus A310 Airworthiness Limitations Items (ALI) Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006 (''Issue 6 of the ALI''), is within 1,500 flight cycles after January 14, 2008, provided that none of the following is exceeded.

(1) Thresholds or intervals in the operator's current approved maintenance schedule that are taken from a previous ALI issue, if existing, and are higher than or equal to those given in Issue 6 of the ALI.

(2) 18 months after January 14, 2008.

(3) 50 percent of the intervals given in Issue 6 of the ALI.

(4) Any application tolerance specified in Section D of Issue 6 of the ALI.

**Corrective Actions**

(q) Damaged, cracked, or corroded structure detected during any inspection done in accordance with Airbus A310 Airworthiness Limitation Items (ALI) Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006 (''Issue 6 of the ALI''), must be repaired, before further flight, in accordance with Issue 6 of the ALI; or in accordance with other data meeting the certification basis of the airplane that has been approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the EASA (or its delegated agent). Where Issue 6 of the ALI specifies to contact Airbus for appropriate action: Before further flight, repair the damaged, cracked, or corroded structure using a method approved by either the Manager, International Branch, ANM–116, or the EASA (or its delegated agent).

**Reporting Requirement**

(r) If any damage that exceeds the allowable limits specified in Airbus A310 Airworthiness Limitations Items (ALI) Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006, is detected during any inspection required by this AD: At the applicable time specified in paragraph (r)(1) or (r)(2) of this AD, submit a report of the finding to Airbus, Customer Service Directorate, *Attn:* Department Manager Maintenance Engineering, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; *e-mail:* sched.maint@airbus.com. The report must include the ALI task reference, airplane serial number, the number of flight cycles and flight hours on the airplane, identification of the affected structure, location and description of the finding including its size and orientation, and the circumstance of detection and inspection method used.

(1) If the inspection was done after January 14, 2008: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to January 14, 2008: Submit the report within 30 days after January 14, 2008.

**New Requirements of This AD**

**Revision of the ALS of the Instructions for ICA**

(s) Within 3 months after the effective date of this AD: Revise the ALS of the ICA to incorporate the structural inspections and inspection intervals defined in the applicable ALI document listed in Table 1 of this AD. Thereafter, except as provided by paragraph (t)(1) of this AD, no alternative structural inspections and inspection intervals may be approved. The actions must be accomplished in accordance with the applicable issue of the ALI. The initial ALI tasks must be done at the times specified in the applicable ALI document listed in Table 1 of this AD. Accomplishing the applicable initial ALI tasks constitutes terminating action for the requirements of paragraphs (g) through (r) of this AD for that airplane only.

TABLE 1—AIRWORTHINESS LIMITATIONS ITEMS DOCUMENT

| Model | Document | Issue | Date |
|---|---|---|---|
| A300 | Airbus A300 Airworthiness Limitation Items Document AI/SE–M2/95A.1308/07 | 4 | June 2008. |
| A310 | Airbus A310 Airworthiness Limitation Items Document AI/SE-M2/95A.1309/07 | 7 | June 2008. |
| A300–600 | Airbus A300–600 Airworthiness Limitation Items Document AI/SE-M2/95A.1310/07 | 12 | June 2008. |

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows:

Where the MCAI includes a compliance time of ''from the effective date of this AD,'' we have determined that a compliance time of ''within 3 months after the effective date of the AD'' is appropriate. The manufacturer and EASA agree with this difference in compliance time.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–04–11, Amendment 39–14943; AD 2007–20–03, Amendment 39–15213; and AD 2007–25–02, Amendment 39–15283; as applicable; are approved as AMOCs for the corresponding provisions of this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

**Related Information**

(u) Refer to MCAI EASA Airworthiness Directive 2009–0155, dated July 17, 2009; Airbus A300–600 Airworthiness Limitation Items (ALI) Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006; Airbus A300–600 ALI Document AI/SE–M2/95A.1310/07, Issue 12, dated June 2008; Airbus A300 ALI Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus A300 Temporary Revision (TR) 3.1, dated April 2006; Airbus A300 ALI Document AI/SE–M2/95A.1308/07, Issue 4, dated June 2008; Airbus A310 ALI Document, AI/SE–M2/95A.0263/06, Issue 6, dated April 2006; Airbus TR 6.1, dated November 2006; Airbus A310 ALI Document, AI/SE–M2/95A.1309/07, Issue 7, dated June 2008; and Airbus Industrie A300 Structural Inspection Document'' (SSID), Revision 2, dated June 1994; for related information.

Issued in Renton, Washington, on January 13, 2011.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–1439 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2011–0031; Directorate Identifier 2010–NM–135–AD]**

**RIN 2120–AA64**

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

**AGENCY:** Federal Aviation Administration (FAA), 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:

There have been two reported cases of failure of the MLG [main landing gear] piston axle, P/N [part number] 49203–3 or 49203–5, resulting from fretting between the inboard axle sleeve and axle thrust face, damage to the protective coating and consequent stress corrosion. In both cases, the MLG did not collapse.

* * * * *

The unsafe condition is failure of the MLG, which could adversely affect the airplane's safe landing. 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 March 11, 2011.

**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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* 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 Operations office 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 Operations 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:** Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

**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–2011–0031; Directorate Identifier 2010–NM–135–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–15, dated May 13, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

There have been two reported cases of failure of the MLG [main landing gear] piston axle, P/N [part number] 49203–3 or 49203–5, resulting from fretting between the inboard axle sleeve and axle thrust face, damage to the protective coating and consequent stress corrosion. In both cases, the MLG did not collapse.

In order to avoid future axle failures, which could potentially result in gear collapse and collateral damage, this directive mandates repetitive visual inspection [for damage and corrosion of the protective coating] and repair as necessary, of the MLG piston axles, P/N 49203–3 and 49203–5.

The unsafe condition is failure of the MLG, which could adversely affect the airplane's safe landing. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Bombardier has issued Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009, including Appendix A, Revision B, dated March 5, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

### Differences Between This AD and the MCAI or Service Information

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

We might also have 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**

Based on the service information, we estimate that this proposed AD would affect about 380 products of U.S. registry. We also estimate that it would take about 22 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 $710,600, or $1,870 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:

**Bombardier, Inc.:** Docket No. FAA–2011–0031; Directorate Identifier 2010–NM–135–AD.

**Comments Due Date**

(a) We must receive comments by March 11, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), and CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category.

**Note 1:** This AD is not applicable to piston axles having part number (P/N) 49203–7 or P/N 49203–9, which were installed in production on Bombardier, Inc. Model CL–600–2C10 airplanes having serial numbers (S/Ns) 10266 and subsequent; and Models CL–600–2D15 and CL–600–2D24 airplanes having S/Ns 15155 and subsequent.

**Subject**

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

**Reason**

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

There have been two reported cases of failure of the MLG [main landing gear] piston axle, P/N 49203–3 or 49203–5, resulting from fretting between the inboard axle sleeve and axle thrust face, damage to the protective coating and consequent stress corrosion. In both cases, the MLG did not collapse.

* * * * *

The unsafe condition is failure of the MLG, which could adversely affect the airplane's safe landing.

**Compliance**

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

**Inspection and Repair**

(g) Inspect to determine whether the airplane has a main landing gear piston axle having P/N 49203–3 or 49203–5. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the main landing gear piston axle can be conclusively determined from that review.

(h) Except as required by paragraph (i) of this AD, if, during the inspection required by paragraph (g) of this AD, the landing gear piston axle is determined to have P/N 49203–3 or 49203–5: At the applicable time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, do a detailed inspection for corrosion and damage of the inboard and outboard piston axles, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009. Before further flight, repair any corrosion or damage found, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009. Within 30 months after the initial inspection, or within 12 months after the effective date of this AD, whichever occurs later, do the inspection specified in this paragraph; and repeat the inspection thereafter at intervals not to exceed 30 months.

(1) For any piston axle that has been in service for 48 months or more as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(2) For any piston axle that has been in service for 24 months or more, but less than 48 months, as of the effective date of this AD: Inspect within 24 months after the effective date of this AD.

(3) For any piston axle that has been in service for less than 24 months as of the effective date of this AD: Inspect within 36 months after the effective date of this AD.

(i) For airplanes that have mark ''32–45'' in the MOD STATUS field of the piston axle nameplate, or that have incorporated one of the Bombardier repair engineering orders (REOs) listed in paragraph 1.D of Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009: Within 12 months after the effective date of this AD, do the inspection specified in paragraph (h) of this AD, and repeat the inspection thereafter at the time specified in paragraph (h) of this AD.

**Terminating Action**

(j) Installing a piston axle having P/N 49203–7 or P/N 49203–9 on any airplane constitutes a terminating action for the requirements of paragraphs (h), (h)(1), (h)(2), and (h)(3) of this AD, for that airplane.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

(k) Inspections and repairs accomplished before the effective date of this AD according to any service bulletin specified in table 1 of this AD, are considered acceptable for compliance with the inspections and repairs specified in paragraph (h) of this AD.

TABLE 1—CREDIT FOR ACCOMPLISHMENT OF PREVIOUS SERVICE INFORMATION

| Document | Revision | Date |
|---|---|---|
| Bombardier Service Bulletin 670BA–32–023 | Original | October 24, 2007. |
| Bombardier Service Bulletin 670BA–32–023 | A | January 7, 2008. |
| Bombardier Service Bulletin 670BA–32–023 | B | March 5, 2008. |

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**Related Information**

(m) Refer to MCAI Canadian Airworthiness Directive CF–2010–15, dated May 13, 2010; and Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009; for related information.

Issued in Renton, Washington on January 13, 2011.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–1440 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 931

**[SATS No. NM–048–FOR; Docket ID OSM–2010–0014]**

## New Mexico Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). New Mexico proposes revisions to and additions of rules about Ownership and Control (''O & C''). New Mexico intends to revise its program to be consistent with the rules published in the **Federal Register** notices published on December 3, 2007, Ownership and Control (72 FR 68000); December 19, 2000, Application and Permit Information Requirements, Permit Eligibility, definitions of Ownership and Control, the AVS, Alternative Enforcement (65 FR 79582); and October 28, 1994, Use of the AVS in Surface Coal Mining Reclamation Permit Approval, Standards and Procedures for Ownership and Control Determinations (59 FR 54306).

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.d.t. February 24, 2011. If requested, we will hold a public hearing on the amendment on February 22, 2011. We will accept requests to speak until 4 p.m., m.d.t. on February 9, 2011.

**ADDRESSES:** You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2010–0014. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov,* you may review copies of the New Mexico program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Albuquerque Office.

Bob Postle, Branch Chief, Field Operations, Program Support Division, Western Region, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Ave. NM Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248–5070.

Bill Brancard, Acting Director, Mining and Minerals Division, New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Sante Fe, New Mexico 87505, (505) 476–3400.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO

80202, Telephone: (303) 293–5010. Internet: *jfulton@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the New Mexico Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

## II. Description of the Proposed Amendment

By letter dated September 1, 2010, New Mexico submitted the proposed amendment in response to OSM's September 3, 2009, letter sent in accordance with 30 CFR 732.17(c). The letter notified New Mexico that changes and additions promulgated by OSM's October 28, 1994, December 19, 2000, and December 3, 2007, amendments to the existing ownership and control rules, at 30 CFR 701, 773, 778, 840, 843 and 847, had been upheld in court and the State must respond by submitting changes to its Ownership and Control rules. New Mexico was thereby required to submit amendments to ensure its program remains consistent with the Federal program. This amendment package is intended to address all required rule changes pertaining to Ownership and Control.

Specifically, New Mexico proposes to amend its administrative rules at 19.8.1 NMAC, Section 7 (Definitions); 19.8.7 NMAC, Section 701 (Identification of Interests); 19.8.11 NMAC, Sections 1105 (Review of Permit Applications) and 1114 (Conformance of Permit); 19.8.20 NMAC, Section 2010 (Hydrologic Balance: Water Quality Standards and Effluent Limitations); 19.8.30 NMAC, Sections 3000 (Cessation Orders), 3003 (Service of Notices of Violation and Cessation Orders) and 3004 (Informal Hearings); 19.8.31 NMAC, Sections 3103 (Assessment of Separate Violation for Each Day) and 3109 (Individual Civil Penalties); and 19.8.34 NMAC Sections 3402 (Application Requirements and Procedures) and 3408 (Revocation and Enforcement).

Additionally, New Mexico proposes the adoption of new sections in 19.8.11 NMAC Sections 1119 (Post-Permit Issuance Requirements and other Actions Based on Ownership, Control and Violation Information), 1120 (Post-Permit Issuance Information Requirements for Permittees) and 1121 (Certifying and Updating Existing Permit Application Information); and 19.8.31 NMAC, Section 3113 (Criminal Penalties). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

*Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

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 in the electronic docket for this rulemaking at *http://www.regulations.gov.* 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.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on February 9, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

## IV. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the

determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR Part 931**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 17, 2010.

**Billie Clark,**

*Acting Regional Director, Western Region.*

[FR Doc. 2011–1511 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–05–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2011–0036; FRL–9256–6]**

## Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Definitions; Common Provisions Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 20, 2003. The intended effect of this proposal is to approve and make federally enforceable those portions of the revisions to Colorado's Common Provisions that are consistent with the Clean Air Act (CAA). Primarily, the revisions involved changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or were deleted to eliminate duplicative provisions that appear in other Colorado regulations. EPA is proposing to approve parts of the revision that delete duplicative or obsolete definitions, or that clarify existing definitions in a manner consistent with the CAA. In addition, EPA proposes to disapprove those portions of the rule revisions that EPA determined are inconsistent with the CAA. This action is being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before February 24, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0036, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: komp.mark@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R08–OAR–2011–0036. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Komp, Air Program, 1595 Wynkoop Street, Mailcode: P–AR, Denver, Colorado 80202–1129, (303) 312–6022, *komp.mark@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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I. General Information
II. Background of State's Submittal
III. EPA Analysis of State's Submittal
IV. Consideration of Section 110(l) of the CAA
V. Proposed Action
VI. Statutory and Executive Order Reviews

### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or Colorado mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *AQCC* mean or refer to Air Quality Control Commission.

(vi) The initials *BACT* mean or refer to Best Available Control Technology, and the initials *LAER* means or refers to Lowest Achievable Emission Rate.

(vii) The initials *ASTM* means or refers to the American Society for Testing and Materials.

## I. General Information

*A. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *http://regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. Background of State's Submittal

On June 20, 2003, the State of Colorado submitted formal revisions to its SIP that changed or deleted numerous definitions in its Common Provisions. Colorado's Common Provisions provide definitions, statement of intent and general provisions that are applicable to all emission control regulations adopted by the State. Primarily, this revision involved changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or deleted to eliminate duplicative provisions that appear in other Colorado regulations.

Definitions deleted include: Actual emissions, allowable emissions, BACT, LAER and the modification of a source. These definitions were deleted from the Common Provisions because the State placed these definitions in their Regulation 3.

Revisions to the Common Provisions also include grammatical, formatting and stylistic changes designed to make the regulation more readable. The State made these revisions to achieve consistency in the language used in the State's air quality regulations. These revisions do not change the applicability of any of the air quality regulation requirements. The State also added a number of abbreviations to the existing list.

The State clarified when fuel burning equipment would be considered part of a manufacturing process. The revisions to the Common Provisions change the definition of fuel burning and added a definition for manufacturing process equipment. The result was to clarify that fuel burning emissions are counted as manufacturing process emissions when they are vented through a common stack with other emissions from the manufacturing process. When fuel burning emissions are vented separately, the emissions are subject to regulations unique to fuel burning equipment.

The definition of construction was changed to clarify the distinction between the State's definition and the definition in federal programs. The clarification acknowledges that federal programs may utilize different definitions of construction and, in cases where enforceability of Federal programs are involved, the federal program definitions apply.

The State determined that many of its definitions in the Common Provisions were either obsolete or found in other State air quality regulations. In those cases, the State eliminated the definitions from the Common Provisions. Section III refers to smoking gasoline powered motor vehicles. Section IV addresses conflict of interest by AQCC members. The State deleted these sections because they are duplicated in other State regulations.

## III. EPA Analysis of State's Submittal

We have evaluated Colorado's June 20, 2003 submittal regarding revisions to the State's Common Provisions. We propose to approve most of the revisions, but also propose to disapprove certain revisions within the June 20, 2003 submittal.

*What EPA Is Proposing To Disapprove*

The State provided, within Section I of the Common Provisions, a new definition for what constitutes the meaning of the word ''day.'' The new definition gives the Colorado Air Pollution Control Division discretion to change the meaning of day from the standard one to any other twenty-four hour period. Given that a day is often the time period for expressing emissions limitations, the revised definition potentially gives the State discretion, without going through a SIP revision, to modify emissions limitations for stationary sources. Such discretion violates section 110(i) of the CAA, which prohibits States (except in certain limited circumstances) from taking any action to modify requirements of a SIP with respect to stationary sources, except through a SIP revision. EPA proposes to disapprove this definition.

The State added language to its definition of ''construction'' for the purposes of prevention of significant deterioration (PSD) and new source review (NSR). The revised definition, for the most part, tracks those given at 40 CFR 51.165(a)(1)(xviii) and 51.166(b)(8). However, instead of providing that construction encompasses those changes that would result in an increase in emissions, the State's revision encompasses only those changes that would result in an increase in ''actual emissions.'' ''Actual emissions,'' in the context of PSD and NSR, is a defined term that in general equals past emissions over a consecutive 24-month period that is representative of normal operations (*see* 40 CFR 51.165(a)(1)(xii)(B), 51.166(b)(21)(ii)). It is not clear how past emissions, prior to a change due to construction, could be representative of normal operations after the change. In any case, the revision is less stringent than Federal requirements and EPA therefore proposes to disapprove it.

Colorado revised section II.I, relating to compliance certifications. Section II.I in the current SIP governs the use of credible evidence or information in compliance certifications and in establishing violations of the Colorado SIP. It reflects language at 40 CFR 51.212(c), promulgated by EPA on February 24, 1997 in the ''Credible Evidence Rule'' (62 FR 8314). The revision adds (in part) the following language: ''Evidence that has the effect of making any relevant standard or permit term more stringent shall not be

credible for proving a violation of the standard or permit term.'' In the preamble to the Credible Evidence Rule, EPA stated that it was not EPA's intent to increase the stringency of any applicable requirement and that the Credible Evidence Rule did not do so (62 FR at 8323). EPA discussed at length and rejected the arguments made by commenters to the contrary (62 FR at 8323–27). For the reasons discussed within the preamble to the Credible Evidence Rule, credible evidence does not increase the stringency of any applicable requirement. EPA therefore proposes to disapprove the revision to section II.I.

EPA proposes to disapprove the deletion of Section IV of the Common Provisions. Section IV refers to provisions regarding potential conflicts of interest of members of the Colorado AQCC. These provisions require the disclosure of information when a potential conflict of interest has been identified. Section 128(a)(2) of the CAA requires that each SIP contain requirements for disclosure of potential conflicts of interest of heads of executive agencies or members of state boards that approve permits or enforcement orders under the CAA. In deleting Section IV, Colorado had intended to submit substitute provisions contained within the rules of procedure for the AQCC; however, Colorado has not submitted them to EPA for inclusion into Colorado's SIP. As the SIP is required to have such provisions, EPA proposes to disapprove the deletion of Section IV.

Finally, the State revised the provision of Affirmative Defense for excess emissions during start up, shutdown and malfunction of equipment. The State in subsequent revisions sent to EPA modified the Affirmative Defense provision. EPA acted on these subsequent revisions in 2008 and the results of the action can be found in 40 CFR 52.320(c)113. Therefore, we are taking no action on the portion of the revision modifying the Affirmative Defense provision within the June 20, 2003 submittal because our subsequent action on the provision has superseded this revision.

*What EPA Is Proposing To Approve*

EPA proposes to approve specific definitions that were added or modified with the June 20, 2003 Common Provisions. These include the definitions for a continuous monitoring system, emergency power generator, manufacturing process, enforceable, federally enforceable, manufacturing process or processing equipment, and volatile organic compounds. The new and modified definitions are consistent with the requirements of the CAA and do not change the stringency of any requirements of the SIP.

Changes that correct numerous grammatical, stylistic and formatting errors within the Common Provisions are proposed for approval by EPA. EPA also proposes to approve the deletion of definitions and Section III that are obsolete or duplicated elsewhere in Colorado's SIP.

## IV. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions being approved that are the subject of this document do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. In regard to the June 20, 2003 submittal, EPA proposes to approve several portions of the revisions to the State's Common Provisions. These portions do not relax the stringency of the Colorado SIP and in some cases strengthen it. Therefore, the portions of the revisions proposed for approval satisfy section 110(l).

## V. Proposed Action

For the reasons expressed above, we propose to approve and disapprove revisions to the Common Provisions as submitted on June 20, 2003. EPA proposes to approve specific definitions that were added or modified with the June 20, 2003 Common Provisions. These include the definitions for continuous monitoring system, emergency power generator, manufacturing process, enforceable, federally enforceable, manufacturing process or processing equipment, and volatile organic compounds.

Changes that correct numerous grammatical, stylistic and formatting errors, duplicative and obsolete provisions, and the addition of several abbreviations within the Common Provisions are also proposed for approval by EPA. This includes the deletion of Section III of the Common Provisions regarding smoking gasoline powered motor vehicles.

EPA proposes to disapprove the modified definitions of ''construction'' and ''day.'' The additional language added to Section II.I regarding credible evidence in submitting compliance certifications is disapproved. EPA proposes to disapprove the deletion of Section IV of the Common Provisions. Section IV refers to provisions regarding the conflicts of interest involving members of the AQCC. These provisions provide for the disclosure of information when a potential conflict of interest has been identified.

EPA will not act on Sections II.E and II.J, defining the provision of Affirmative Defense for excess emissions during start up, shutdown and malfunction of equipment. The State in subsequent revisions sent to EPA modified the Affirmative Defense provision. EPA acted on these subsequent revisions in 2008 (40 CFR 52.320(c)(113)).

## VI. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et sq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

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

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

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 13, 2011.

**Carol Rushin,**

*Deputy Regional Administrator, Region 8.*

[FR Doc. 2011–1475 Filed 1–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2007–0649; FRL–9256–5]**

## Approval and Promulgation of State Implementation Plans; State of Colorado Regulation Number 3: Revisions to the Air Pollutant Emission Notice Requirements and Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing partial approval and partial disapproval of State Implementation Plan (SIP) revisions regarding the Air Pollutant Emission Notice (APEN) regulations submitted by the State of Colorado on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006 and August 1, 2007. The APEN provisions in Sections II.A. through II.D., Part A of Colorado's Regulation Number 3, specify the APEN filing requirements for stationary sources and exemptions from such requirements. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before February 24, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–0649, by one of the following methods:

• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *E-mail*: *freeman.crystal@epa.gov.*

• *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R08–OAR–2007–0649. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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**FOR FURTHER INFORMATION CONTACT:** Crystal Freeman, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6602, *freeman.crystal@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Colorado* and *State* mean the State of Colorado.

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## I. General Information

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. Background

The Colorado APEN provisions in Regulation Number 3, Part A, Sections II.A. through II.C., specify requirements for stationary sources (major and minor) to file emission notices. These notices provide information such as the location where a source's emissions will occur, the nature of the source or of the activity generating the expected emissions, and an estimate of the emissions' quantity and composition. The Colorado APEN provisions in Regulation Number 3, Part A, Section II.D. exempt specific categories of sources from APEN requirements.

EPA's last final rulemaking action addressing revisions to Colorado's APEN provisions was published January 21, 1997 (62 FR 2910). The action proposed today addresses the APEN SIP revisions submitted by the State of Colorado between 1997 and 2007 with Governor's letters dated as follows: September 16, 1997; June 20, 2003; July 11, 2005; August 8, 2006; and August 1, 2007. EPA's evaluation of the revisions submitted by the State does not trace the APEN provision changes through each of the submissions noted above. For reasons of efficiency and clarity, EPA compared the language of each APEN provision as submitted by the State on August 1, 2007 with the EPA-approved text of the same APEN provision in the 1997 Colorado SIP. For each provision, the substantive language changes, EPA's proposed action, EPA's comments about the general nature of the changes, and the rationale for the Agency action are reported in Table 1 of the Technical Support Document (TSD) underpinning our proposed action.[1] For actions involving a provision's proposed disapproval our analysis does reference and address relevant material supporting the revision's adoption by the State. In some cases, EPA asked the State for clarification of revisions; these clarifications are also available in the docket. Through this approach to the cumulative revisions, EPA intends for this proposed rule action to address all APEN revisions as submitted by the State of Colorado on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006, and August 1, 2007.

[1] EPA's Technical Support Document (TSD), part of the docket for this proposed action (accessible on the regulations.gov Web site under Docket Number EPA–R08–OAR–2007–0649) clearly identifies for each of the APEN provisions the cumulative effect of the revisions (if any) adopted by the State between 1997 and 2007. The TSD's Table 1 lists all the APEN provisions (requirements and exemptions) and for each it provides: the provision number in the 1997 EPA-approved SIP, and in the 2007 State submittal; a short description or title of the provision, and cumulative language changes from 1997 to 2007; EPA's proposed action (Approval, Disapproval, or No Action); and EPA's comments summarizing the nature of the changes, and providing a rationale for supporting the proposed action. EPA believes that this approach allows a clear understanding of the overall revisions adopted by the State for each provision and of the rationale for the Agency's proposed action. The cumulative revisions identified in Table 1 of the TSD were part of the Colorado submissions dated September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006 and August 1, 2007.

## III. What action is EPA proposing?

EPA is proposing: (a) To approve some of the revisions to the Colorado APEN provisions submitted to EPA on September 16, 1997; June 20, 2003; July 11, 2005; August 8, 2006; and August 1, 2007; (b) to disapprove some of the revisions; and (c) to not take action on a few revisions unrelated to the SIP or to maintenance of the National Ambient Air Quality Standards (NAAQS). As mentioned in section II above, the specific provisions we propose to approve, disapprove, or not act on are identified in the TSD; those that require extended analysis are discussed in section V below.

## IV. What is the State process to submit these materials to EPA?

Section 110(k) of the CAA addresses EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The Colorado Air Quality Control Commission (AQCC) held public hearings for, and adopted, on March 31, 1996 the APEN revisions submitted to EPA September 16, 1997. On June 20, 2003 Colorado submitted two APEN revision packages. For the first package, public hearing and adoption dates were respectively February 21 and July 18, 2002. For the second, the revisions were submitted to public hearing and adopted on the same October 17, 2002 date. For APEN revisions submitted to EPA on July 11, 2005, the Colorado AQCC held public hearings February 19, April 15, and April 16, 2004, and adopted the revisions on the latter date. The Colorado AQCC held a public hearing on December 16, 2004 for APEN revisions adopted the same day and submitted to EPA August 8, 2006. For the last of the submissions considered in this action, APEN revisions submitted to EPA on August 1, 2007, the Colorado AQCC public hearing and adoption took place on August 17, 2006.

EPA has reviewed the submittals by the State of Colorado and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. All Colorado APEN

revisions submittals referenced above, and addressed in this action, became complete by operation of law under section 110(k)(1)(B) of the CAA six months after their submittal dates.

## V. EPA's Review and Technical Information

As indicated in the Background section of this action, for each of the APEN provisions in Regulation Number 3, Part A, Sections II.A. through II.D., EPA's TSD identifies the cumulative revisions submitted by the State between 1997 and 2007, provides EPA's assessment of the revisions, and indicates EPA's proposed action (approval, no action, or disapproval). The TSD compares the cumulative revisions of each APEN provision with the current EPA-approved language of the same provision, effective as of February 20, 1997.[2] For revisions to APEN provisions that must be addressed in greater detail, EPA's evaluation references the specific submittal or submittals affecting the changes, their related material, as well as any subsequent information/clarification provided to EPA by the State of Colorado. All material contributing to EPA's proposed action is referenced appropriately and made available for review as part of the docket supporting the Agency's proposed rulemaking.

For clarity, EPA's evaluation of the APEN revisions submitted by the State of Colorado between 1997 and 2007 considers four groups identified according to EPA's action. The first group consists of the APEN provisions that the State did not revise between September 1997 and August 2007. These provisions retained in the 2007 APEN submission are the same language as the provisions in the 1997 EPA-approved Colorado SIP. For this group of APEN provisions there are no SIP revisions for EPA to propose action on. The second group consists of the APEN provisions for which the State had adopted only clerical changes, such as grammar or style changes, that do not reflect any substantive modifications. For example, some of the changes expanded abbreviations such as ''APEN,'' and others replaced the digits of a numerical value with its equivalent text—i.e., ''four hundred'' instead of ''400.'' EPA proposes to approve all the clerical revisions submitted by the State of Colorado between September 16, 1997 and August 1, 2007.

The third and fourth groups consist of the Colorado APEN provisions that underwent substantive revisions; the third group are those provisions EPA proposes to approve and the fourth those EPA proposes to disapprove. In general, our evaluation of each substantive revision assesses whether the revision makes the SIP more or less stringent, or weakens protection of the NAAQS. In carrying this out, we consider whether the revisions satisfied recordkeeping and reporting requirements set out in 40 CFR 51.211. We also consider whether the revisions affected the applicability of substantive provisions elsewhere within the SIP. In particular, a source that is exempt from APEN requirements is also exempt from construction permitting requirements (*see* Regulation 3, Part B, Section III.D.1.a). As a result, the requirements for stationary sources at 40 CFR 51.160 are implicated by the submitted APEN exemptions we review in this proposal.

For many of the provisions affected by the substantive revisions submitted by the State, EPA's rationale for its proposed action is explained and provided in Table 1 of the TSD. For the remaining provisions, affected by revisions requiring more complex and detailed evaluations, we do so in the following paragraphs.

We examine first the revisions that EPA proposes to approve, in the order as they appear in Regulation 3. Provision II.B.1.b.[3] pertains to alternative methods for emissions estimates. The language of the 1997 EPA-approved provision included a reference to ''Section II.E.2. of this Regulation No. 3, Part A.,'' which addressed deferrals of APEN reporting timelines—a subject unrelated to the issue of emissions estimates and alternative methods. This reference was an obvious clerical error corrected by the State, with the June 20, 2003 submission,[4] to ''Section II.C.2.'' The corrected reference, on the other hand, specifies thresholds for significant emission changes, which relate to the accuracy required for emission estimates. The lower the significant emission changes threshold, the greater the precision required of an acceptable alternate emissions estimate. EPA therefore proposes to approve this correction.

EPA also proposes to approve revisions to II.B.3.a., which sets thresholds (in tons per year) of criteria pollutants for APEN applicability. The revisions clarify the understanding that the one ton per year (tpy) threshold in nonattainment areas applies to the pollutants for which the area is in nonattainment. EPA proposes approval of this revision because the change does not make the SIP less stringent or affect the ambient air quality.

Next, APEN provision II.B.9. of the EPA-approved SIP identifies criteria pollutants for the purpose of APEN applicability. The Colorado AQCC adopted on April 16, 2004 the revised provision that was submitted to EPA on July 11, 2005; Colorado retained the same language in the August 8, 2006 and August 1, 2007 submissions. The revision generally defines criteria pollutants as those for which EPA has established a NAAQS. The revision also identifies NOx and volatile organic compounds (VOCs) as precursors to ozone. EPA proposes approval of this revision because it makes the definition of criteria pollutants (for the purposes of APEN applicability) consistent with the federal definition. In the same submittal, the AQCC renumbered the provision to I.B.16. EPA is also proposing to approve this renumbering, which does not affect the applicability of the provision. EPA notes that since prior to this renumbering Section I.B.16 was ''reserved,'' the move of II.B.9 to this section does not replace any other provision, and therefore does not impact the stringency of the SIP.

EPA is also proposing to approve the revision to II.C.1.h. submitted on July 11, 2005. The revision is intended to update the reference to the definition of ''major stationary source.'' However, the reference specified, Section II.A.25., gives the definition of ''Minor Source Baseline Date,'' while Section II.A.24. defines ''Major Stationary Source.'' EPA has discussed this with the State; the State concurs that the reference should be ''Section II.A.24.'' and has agreed to correct this discrepancy in a later submittal to EPA. Given that the correct reference can be determined from the context, EPA proposes approval of the revision.

A revision to II.C.3.d was submitted to EPA on August 8, 2006. The revised provision changes the time APENs are due for control equipment at condensate storage tanks located at oil and gas exploration facilities. However, the revision does not exempt such sources from reporting and therefore does not relieve them from any substantive requirements of the SIP. As the revision does not impact emission levels and ambient air quality standards, EPA is proposing to approve it.

We turn to exemptions from APEN requirements that have been added to Section II.D.1 in the submittals. First, II.D.1.nnn exempts ''Fugitive emissions

[2] 62 FR 2910, January 21, 1997.

[3] Unless otherwise specified, all references to sections in the remainder of this notice are to sections in Part A of Regulation 3.

[4] This revision was adopted by Colorado AQCC July 18, 2002.

of hazardous air pollutants that are natural constituents of native soils and rock (not added or concentrated by chemical or mechanical processes) from underground mines or surface mines unless such source is a major source of hazardous air pollutants under Part C of Regulation No. 3.'' The provision was adopted on March 31, 1996, and submitted to the EPA on September 16, 1997. This exemption will not affect any substantive requirement in the SIP relating to emissions of criteria pollutants and thus EPA is proposing approval.

EPA is also proposing approval of the exemption in APEN provision II.D.1.ooo: ''The use of pesticides, fumigants, and herbicides when used in accordance with requirements established under the Federal Insecticide, Fungicide and Rodenticide Act as established by the U.S. EPA (United States Code Title 7, Section 136 *et seq.*).'' The exemption was adopted on March 31, 1996, and submitted to the EPA on September 16, 1997. Such sources are not elsewhere regulated in the SIP and therefore EPA proposes approval of this exemption.

The exemption in II.D.1.ppp, ''Ventilation of emissions from mobile sources operating within a tunnel, garage, or building,'' was submitted to EPA on September 16, 1997. EPA proposes approval of this revision to the Colorado APEN SIP on the basis of the following considerations. The Colorado APEN reporting requirements are applicable only to stationary sources (*see* Regulation Number 3, Part A, Section II.A.). Section 302(z) of the (CAA) defines stationary sources as ''any source of an air pollutant except those emissions resulting from an internal combustion engine for transportation purposes * * *.'' The exemption applies only when a mobile source (as defined in Regulation 3) is operating for transportation purposes. We recommend that in a future SIP revision the State of Colorado clarify the applicability of the current provision.

EPA also proposes to approve the exemption in Section II.D.1.dddd., applicable to ''Non-road engines as defined in Section I.B.29. of this Part A, except certain non-road engines subject to state-only air pollutant emission notice and permitting requirements pursuant to Section I.B.29.c. of this part.'' The definition of non-road engines in Section I.B.29 is consistent with the federal definition of non-road engine at 40 CFR 1068.30. Under section 302(z) of the CAA non-road engines are specifically excluded from the definition of stationary sources, to which the Colorado APEN requirements apply (see Section II.A.).

APEN substantive revisions submitted by the State to EPA between September 16, 1997 and August 1, 2007 include revisions to or additions of five exemption provisions that EPA proposes to disapprove. The first revision we propose to disapprove regards the APEN exemption for open burning activities, in Section II.D.1.q. During the period considered here, some of the open burning provisions were moved by the State from Regulation Number 1 to Regulation Number 9 (which is a State-only Regulation, and therefore outside the Colorado SIP) and then back to Regulation Number 1. At the same time, Colorado submitted a June 20, 2003 revision of the ''Open burning activities'' provision in Section II.D.1.q. that changed a reference to Regulation Number 1 (part of the Colorado SIP) into a reference to Regulation Number 9. Since, as noted above, Regulation Number 9 is enforceable only by the State, EPA proposes to disapprove the change to the reference to Regulation Number 9.

EPA is proposing to disapprove the APEN provision at Section II.D.1.xxx. exempting ''Deaerator/vacuum pump exhausts,'' adopted on March 31, 1996 and submitted to EPA on September 16, 1997. This provision would potentially exempt emissions both from the devices and from the liquid or gas the device operates on. If the liquid or gas operated on contains high levels of criteria pollutants or their precursors (either in a dissolved form in liquid or mixed in gas), then high levels of criteria pollutants may be emitted from these devices. As APEN exemptions are linked to exemption from construction permitting, this exemption may increase emissions of criteria pollutants (or their precursors). Under section 110(l) of the Act, EPA cannot approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Furthermore, as these stationary sources may emit significant amounts of criteria pollutants, the exemption from permitting fails to ensure that construction or modification of these sources will not interfere with attainment or maintenance of the NAAQS (*see* 40 CFR 51.160(a)(2)). EPA therefore proposes to disapprove the exemption in II.D.1.xxx.

EPA also proposes to disapprove APEN exemption A–II.D.1.sss and its subprovisions A–II.D.1.sss.(i) through A–II.D.1.sss.(iii). This provision exempts three tiers of stationary internal combustion engines from APEN requirements. The tiers are defined by engine horsepower and hours of operation per year: (1) Those engines less than or equal to 175 horsepower that operate less than 1450 hours per year; (2) those greater than 175 horsepower and less than or equal to 300 horsepower that operate less than 850 hours per year; and (3) those greater than 300 horsepower that operate less than 340 hours per year. As a result of the exemption from APEN requirements, such engines are also exempt from construction permit requirements in Part B of Regulation 3 (see Part B, Section III.D.1.a).

The provision does not require owners or operators that claim the exemption to keep records of the hours of operation. As a result, the limit on the hours of operation is unenforceable. In parallel instances where a source seeks to limit its potential to emit (''PTE'') through an operational limitation (such as on hours of operation) in a permit, EPA guidance recommends that the limitation be enforceable as a practical matter. (Memorandum from Terrell E. Hunt & John S. Seitz entitled ''Guidance on Limiting Potential to Emit in New Source Permitting'' (June 13, 1989).) The guidance specifically notes, ''permits with limits on hours of operation * * * should require an operating log in which the actual hours of operation * * * are recorded.'' (*Id.* at 6.) The logs should be made available to the permitting authority, which allows it to verify compliance with the limit. Although this recommendation is in the context of practical enforceability of operational limitations in a permit, the underlying principle applies to enforceability of SIP provisions. Section 110(a)(2)(A) of the CAA requires that emission limitations in a SIP be enforceable.[5] Under the principle set out in the guidance discussed above, the provision is unenforceable, as there is no requirement to keep records of hours of operation.

Without an enforceable limit on the hours of operations, engines in even the lowest tier (175 horsepower or less) may emit up to 8.4 tons per year (''tpy'') of $NO_X$ for gasoline fuel or 23.8 tpy of $NO_X$ for diesel fuel, if operated for the full year. This is considerably above the level for the existing source-specific

[5] In addition, 40 CFR 51.160(a)(1) requires SIPs contain legally enforceable procedures for determining whether construction or modification of a stationary source will violate applicable portions of the control strategy, and 40 CFR 51.211(b) requires SIPs contain legally enforceable procedures for requiring owners and operators of stationary sources to keep records necessary to determine compliance with applicable portions of the control strategy.

exemption from construction permitting for stationary internal combustion engines (Part B, III.D.1.c(iii)), which is capped at 5 tons per year.

This in turn raises another issue. Section 110(l) of the Act provides that EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Due to the linked exemption from construction permitting, emissions of criteria pollutants and their precursors (such as, again, $NO_X$) may increase as a result of the exemption from APEN requirements. For this reason, and for the reason that the provision appears to be unenforceable, EPA proposes to disapprove the addition of the exemption in A.II.D.1.sss to the SIP.

Similar issues are raised by the exemption in A–II.D.1.ttt. This provision exempts three tiers of emergency power generators from APEN requirements: (1) Those with a rated horsepower of less than 260; (2) those that operate no more than 250 hours per year and have a rated horsepower of less than 737; and (3) those that operate no more than 100 hours per year and have a rated horsepower of less than 1,840. For similar reasons to those discussed above, EPA regards the limitations on hours in tiers 2 and 3 as unenforceable and therefore proposes to disapprove subprovisions A–II.D.1.ttt.(ii) and A–II.D.1.ttt.(iii). Sources in tier 1, on the other hand, do not have a limit on hours of operation. However, as tier 1 includes generators up to 260 hp, emissions from these sources may be even greater than the emissions from the first tier stationary internal combustion engines discussed above. As with those engines, this raises the issue of compliance with section 110(l) of the Act. EPA therefore proposes to also disapprove the exemption in A–II.D.1.ttt.(i).

EPA also proposes to disapprove the exemption in Section II.D.1.ffff., applicable to ''Air Curtain Destructors burning only yard waste, wood waste, and clean lumber, or any mixture thereof generated as a result of projects to reduce the risk of wildfire and are not located at a commercial or industrial facility.'' The exemption does not apply to ''[a]ir curtain incinerators that are considered incinerators as defined by the Common Provisions.'' The exemption in II.D.1.ffff. was submitted to EPA on August 1, 2007.

Under the definition of ''incinerator'' in a subsequent revision to the Common Provisions of Colorado's SIP, air curtain destructors that are subject to a New Source Performance Standard (NSPS) are considered ''incinerators.'' On December 16, 2005, EPA published a final rule (70 FR 74870) for NSPS and emission guidelines for new and existing ''other'' solid waste incineration units (OSWI). Under this rule, air curtain destructors (called air curtain incinerators in the rule) are subject to an NSPS. As a result, this exemption, II.D.1.ffff., is superseded. Additionally, Colorado has agreed that this exemption, II.D.1.ffff., is no longer valid and thus EPA is proposing disapproval.

APEN revisions submitted by the State to EPA between September 16, 1997 and August 1, 2007 include revisions to six provisions that EPA proposes to take no action on. The first revisions we propose to take no action on are: II.D.1.m; II.D.1.ee; II.D.1.uu; II.D.1.ddd; and II.D.1.eeee. EPA is proposing to not act on these provisions in this **Federal Register** action, because EPA has already proposed approval of the repeal of these exemptions in a separate action published on July 21, 2010 (75 FR 42346). Additionally, EPA is not proposing action on the revision to APEN exemption II.D.1.uuu., because we proposed approval of the revision in the same July 21, 2010 proposal.

## VI. Proposed Action

EPA is proposing partial approval and partial disapproval of the Colorado SIP revisions for APEN requirements and exemptions submitted by the State on September 16, 1997, June 20, 2003, July 11, 2005, August 8, 2006, and August 1, 2007. As noted above, EPA's evaluation of the revisions submitted by the State does not track the APEN provision changes through each of the submissions (to avoid having to evaluate revisions that may be significantly modified or even reversed in subsequent submittals), but for each provision compares the textual changes between the EPA-approved Colorado APEN provisions effective February 21, 1997, and the Colorado-adopted APEN provisions included with the August 1, 2007 submittal. This approach allows EPA to evaluate, for each provision, the cumulative revisions submitted by the State on the dates specified above.

A comprehensive summary of the Colorado APEN provisions in Regulation Number 3, Part A, Section II, organized by EPA's proposed rule action, is provided in Table 2 below. The APEN provision numbers are as codified in the August 1, 2007 submission.

TABLE 2—LIST OF COLORADO APEN PROVISIONS (REQUIREMENTS AND EXEMPTION IN SECTIONS II.A THROUGH II.D OF PART A, REGULATION NUMBER 3) BY EPA PROPOSED RULE ACTION

| EPA's proposed action | APEN provision number in August 1, 2007 submission |
|---|---|
| Approval—Substantially Revised Provisions ..... | II.A; II.B.1.b; II.B.3; II.B.3.a; II.C.1.h; II.C.2.b.(ii); II.C.3.c; II.C.3.d; II.D.1; II.D.1.a; II.D.1.f; II.D.1.g; II.D.1.i; II.D.1.nn; II.D.1.oo; II.D.1.ccc; II.D.1.fff; II.D.1.lll; II.D.1.nnn. through II.D.1.qqq; II.D.1.rrr; II.D.1.vvv; II.D.1.www; II.D.1.yyy through II.D.1.dddd; II.D.4. through II.D.6. |
| Approval—Provisions with Clerical Revisions ..... | II.B.1; II.B.2; II.B.4.a. through II.B.4.f; II.C. through II.C.1.a; II.C.2; II.C.2.b; II.C.2.b.(i); II.C.2.b.(iii). through II.C.3.b; II.D; II.D.1.h; II.D.1.j; II.D.1.k; II.D.1.n; II.D.1.x; II.D.1.y; II.D.1.aa; II.D.1.bb; II.D.1.kk; II.D.1.aaa; II.D.1.bbb; II.D.1.ggg; II.D.2; II.D.3. |
| Disapproval—Substantially Revised Provisions .. | II.D.1.q; II.D.1.sss; II.D.1.ttt; II.D.1.xxx; II.D.1.ffff. |
| No Action—EPA's Prior Proposed Action ..... | II.D.1.m; II.D.1.ee; II.D.1.uu; II.D.1.ddd; II.D.1.uuu; II.D.1.eeee. |
| No Action—Un-Revised Provisions ..... | II.B; II.B.1.a; II.B.3.b; II.B.4; II.B.5; II.B.6; II.C.1.b. through II.C.1.g; II.C.2.a; II.D.1.b. through II.D.1.e; II.D.1.i.(i). through II.D.1.i.(iii); II.D.1.l; II.D.1.o; II.D.1.p; II.D.1.r. through II.D.1.w; II.D.1.z; II.D.1.cc; II.D.1.dd; II.D.1.ff. through II.D.1.jj; II.D.1.ll; II.D.1.mm; II.D.1.pp. through II.D.1.tt; II.D.1.vv. through II.D.1.zz; II.D.1.eee; II.D.1.hhh. through II.D.1.kkk; II.D.1.mmm. |

In addition, EPA is proposing approval of certain other deletion and renumbering of APEN requirements. The provisions (using the numbering from the EPA-approved SIP, effective February 21, 1997) that are proposed for deletion are: II.B.8., II.B.10., and II.D.4.b. Deletion of the exemptions in II.D.4.b. makes the SIP more stringent, and deletion of the other provisions does not impact APEN requirements and exemptions, nor any other SIP provisions. EPA therefore proposes to approve these deletions. EPA's proposed approval of the renumbering of APEN requirements will be for the entirety of the language and their new location in Section I.B. The provision references, before the renumbering, were: II.B.5. and II.B. 9. The references, after the renumbering, are, respectively: I.B.43 and I.B.16. The renumbering of these provisions does not impact APEN requirements and exemptions, nor any other SIP provisions.

As indicated in the Background section of this action, for each of the APEN provisions in Regulation Number 3, Part A, Sections II.A. through II.D., EPA's TSD identifies the cumulative revisions (if any) submitted by the State between 1997 and 2007, provides its assessment of the revisions within the regulatory context referenced earlier in this action, and indicates EPA's proposed action (approval, no action, or disapproval.)

## VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 13, 2011.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2011–1477 Filed 1–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 174

**[Docket No. FRA–2011–0004]**

## Hazardous Materials: Improving the Safety of Railroad Transportation of Hazardous Materials

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Public Meeting.

**SUMMARY:** This notice announces that FRA has scheduled a public meeting in Washington, DC, to discuss its process of issuing movement approvals pursuant to Title 49 Code of Federal Regulations (CFR) 174.50. In an effort to continually improve this aspect of its safety program, FRA is undertaking a comprehensive review of its process of issuing movement approvals, and through this public meeting seeks to gain input from all persons and stakeholders affected or interested in this aspect of FRA's hazardous materials program.

**DATES:** The public meeting will be held on Tuesday, February 22, 2011, starting at 1 p.m.

**ADDRESSES:** The public meeting will be held at the DOT Conference Center, located at 1200 New Jersey Avenue, SE., Washington, DC 20590 in the Oklahoma Conference Room (Rooms A–B–C).

*Oral Presentations:* In order to ensure all interested parties are provided ample opportunity to speak at the meeting, any person wishing to present an oral statement should notify Mr. Karl Alexy, P.E., Engineer—Hazardous Materials, FRA Office of Safety Assurance and Compliance, at least 4 business days before the date of the public meeting. Mr. Alexy can be reached by e-mail at *Karl.Alexy@dot.gov* or by phone at (202) 493–6245. For information on facilities or services for persons with disabilities, or to request special assistance at the meeting, contact Mr. Alexy as soon as possible.

FRA will make a teleconference line available for any interested party who wishes to attend the meeting by phone. Any interested party desiring to attend the meeting by phone should contact Mr. Alexy as soon as possible.

*Written Comments:* We invite interested parties who are unable to attend the meeting, or who otherwise desire to submit written comments or data, to submit any relevant information, data, or comments to the above-referenced docket (FRA–2011–

0004). Written comments may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Comments submitted by March 24, 2011, will be considered by FRA. Comments submitted after that date will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Karl Alexy, Engineer–Hazardous Materials Division, at (202) 493–6245 or *Karl.Alexy@dot.gov;* or William Schoonover, Staff Director, Hazardous Materials Division, at (202) 493–6229 or *William.Schoonover@dot.gov,* FRA Office of Safety Assurance and Compliance.

**SUPPLEMENTARY INFORMATION:** Pursuant to 49 CFR 174.50, FRA has the authority to approve the rail movement of bulk hazardous materials packages that do not conform to the hazardous materials regulations (HMR; 49 CFR parts 171–180). The genesis of 49 CFR 174.50 was the 1996 consolidation of various regulatory provisions that prohibited railroads from forwarding damaged packages, leaking tank cars (except for necessary short moves), or any tank car found in noncompliance with the HMR, except under the terms of a DOT exemption (now referred to as a DOT ''special permit''). In consolidating these regulatory provisions and authorizing FRA's Associate Administrator for Railroad Safety/Chief Safety Officer to approve the movements of nonconforming packages by rail, the stated goal of the Research and Special Programs Administration (the Pipeline and Hazardous Materials Safety Administration's predecessor agency) was to make clear that the movement of packages that do not conform to the HMR was prohibited, but at the same time, provide a method to allow bulk packages (including tank cars) that no longer meet their packaging specifications to be moved safely by rail when necessary to effect corrective actions and repairs. *See* 60 FR 65,492 and 65,495 (December 19, 1995); 61 FR 28,666 and 28,669 (June 5, 1996); and 65 FR 50,450 and 50,455 (August 18, 2000).

The number of movement approvals issued by FRA over the last several years has steadily increased. FRA issued 380 movement approvals in calendar year (CY) 2007, 444 in CY 2008, 645 in CY 2009, and 906 in CY 2010. Movement approvals have been issued for such nonconformances as service equipment, tank shell, or lining failures; overloaded packagings; jacket, tank car shell, or head damage; stub sill weld cracks; failures of heater coils or thermal protection systems; tank cars overdue for required tests; and other reasons. Significant information on the movement approval process can be found on FRA's Web site at *http://www.fra.dot.gov/downloads/safety/OTMAapprovalrequest1010.pdf.*

As part of FRA's ongoing regulatory review efforts, and given the increasing number of movement approvals FRA has issued over the last several years, FRA believes a comprehensive review of its process will ensure the continued efficient handling of movement approval requests, while at the same time, ensuring that all relevant safety aspects of such requests are adequately considered. FRA encourages all interested persons to participate in this meeting, either in person at the address noted above or via telephone. We encourage participants (wishing to make oral statements) to plan on attending the entire meeting, since FRA may not be able to accommodate competing demands to appear at specific times. A transcript of the meeting will be made available to meeting participants and the public through the above-referenced docket (FRA–2011–0004).

*Privacy:* Anyone is able to search all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 665, Number 70, Pages 19477–78) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on January 19, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2011–1455 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–60–P**

# Notices

Federal Register
Vol. 76, No. 16
Tuesday, January 25, 2011

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.

## AFRICAN DEVELOPMENT FOUNDATION

### Board of Directors Meeting

*Meeting:* African Development Foundation, Board of Directors Meeting.

*Time:* Tuesday, February 1, 2011, 2010, 8:30 a.m. to 12:30 p.m.

*Place:* African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

*Date:* Tuesday, February 1, 2011.

*Status:*

1. Open session, Tuesday, February 1, 2011, *8:30 a.m. to 11:30 a.m.;* and

2. Closed session, Tuesday, February 1, 2011, *11:30 a.m. to 12:30 p.m.*

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Michele M. Rivard at (202) 673–3916 or *mrivard@usadf.gov* of your request to attend by 5 p.m. on Thursday, January 27, 2011.

**Lloyd O. Pierson,**

*President & CEO, USADF.*

[FR Doc. 2011–1430 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Office of the Assistant Secretary for Civil Rights; Request for Reinstatement of a Previously Approved Information Collection; Correction

**AGENCY:** Office of the Assistant Secretary for Civil Rights, Department of Agriculture.

**ACTION:** Notice; correction.

**SUMMARY:** The Office of the Assistance Secretary for Civil Rights, U.S. Department of Agriculture published a document in the **Federal Register** of November 22, 2010, concerning request for comnents on the notice of request for reinstatement of a previously approved information collection. The published document requires clarification on what information is being collected from the public.

**DATES:** We will consider comments that we receive by February 11, 2011.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact David King, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–8106 (voice), (202) 619–6853 (fax), *david.king@ascr.usda.gov* (email).

In the **Federal Register** of November 22, 2010, in FR Doc. 2010–29132, on page 71067, make the following corrections:

In the second colunm, delete the word "Finally" from the fifth sentence of the second paragraph, so that the sentence begins, "The respondent is asked to identify * * *"

In the second column, after the last line, which reads, "(Not all bases apply to all programs.)", add the following sentence:

Finally, the respondent is asked to provide information about what would be required to resolve the complaint, from his or her perspective, as well as information about whether the respondent has previously filed a complaint about the incident in another forum.

In the second column, after the second paragraph, add a new paragraph that reads:

In addition, the respondent is asked voluntarily to provide his or her race, ethnicity, gender, and national origin. This information will be used to help USDA monitor enforcement of laws that require equal access to its programs for eligible persons.

Dated: January 12, 2011.

**Joe Leonard, Jr.,**

*Assistant Secretary for Civil Rights.*

[FR Doc. 2011–1165 Filed 1–24–11; 8:45 am]

**BILLING CODE M**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2010–0114]**

### Notice of Availability of Pest Risk Analyses for the Importation of Fresh Edible Flowers of Izote, Immature Inflorescences of Pacaya, Immature Inflorescences of Chufle, and Fresh Leaves of Chipilin From El Salvador Into the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that we have prepared pest risk analyses that evaluate the risks associated with the importation into the continental United States of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador. Based on those analyses, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador. We are making the pest risk analyses available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before March 28, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0114* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0114, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0114.

*Reading Room:* You may read any comments that we receive on this

docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Phillip B. Grove, Regulatory Coordinator, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1236; (301) 734–6280.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk assessment as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of El Salvador to allow the importation of edible fresh flowers of izote (*Yucca guatemalensis* Baker), immature inflorescences of pacaya (*Chamaedorea tepejilote* Liem.), immature inflorescences of chufle (*Calathea macrosepala* K. Schumm), and fresh leaves of Chipilin (*Crotalaria longirostrata* Hook and Arn.) from El Salvador into the continental United States. We have completed four pest risk assessments to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on those pest risk assessments, have prepared three risk management documents to identify phytosanitary measures that could be applied to fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin to mitigate the pest risk. We have concluded that fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin can be safely imported into the continental United States from El Salvador using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analyses for public review and comment. The pest risk analyses may be viewed on the Regulations.gov Web site or in our reading room (*see* **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analyses by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the subject of the pest risk analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador into the continental United States subject to the requirements specified in the risk management documents.

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

Done in Washington, DC, this 19th day of January 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–1509 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Coconino and Kaibab National Forests, Arizona, Four Forest Restoration Initiative

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Coconino and Kaibab National Forests are proposing to conduct restoration activities within a 750,000 acre ponderosa pine ecosystem over approximately 10 years. Treatment areas are located on the Williams and Tusayan districts of the Kaibab National Forest and on the Flagstaff, Mogollon Rim and Red Rock districts of the Coconino National Forest. Project treatments would occur in the vicinity of Flagstaff, Munds Park, Mormon Lakes, Tusayan, and Williams, Arizona. The objective of this project is to re-establish forest structure, pattern and composition, which will lead to increased forest resiliency and function. Resiliency increases the ability of the ponderosa pine forest to survive natural disturbances such as insect and disease, fire and climate change.

**DATES:** Comments concerning the scope of the analysis must be received by March 11, 2011. The draft environmental impact statement is expected in October, 2011 and the final environmental impact statement is expected April, 2012.

**ADDRESSES:** Send written comments to Coconino National Forest, Attention: 4FRI, 1814 S. Thompson Street, Flagstaff, Arizona 86001. Comments may also be sent via e-mail to *4FRI_comments@fs.fed.us,* or via facsimile to (928) 527–3620.

**FOR FURTHER INFORMATION CONTACT:** Henry Provencio, 4FRI Team Leader at (928) 226–4684 or via e-mail at *hprovencio@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

Reduced forest health and the lack of diversity have resulted in a forest that is less resilient to the damaging effects of drought, insect and disease, and intense wildfire. The desired condition is to move towards an uneven-aged forest structure with all size classes represented. There is a need to improve forest structure and maintain the forest mosaic with frequent, low intensity fire. There is a need to implement the forest plan which states, "Manage for old age trees such that as much old forest structure as possible is sustained over time across the landscape" (USDA Forest Service 1987, as amended). Vegetation diversity throughout the analysis area has declined. The desired condition is to have Gambel oak and aspen present and reproducing. There is a need to maintain and promote Gambel oak by removing ponderosa pine competition, stimulating new growth, and maintaining growth in large diameter trees. Where possible, there is a need to regenerate aspen by removing ponderosa pine competition, stimulating growth and increasing individual recruitment.

Grasslands (which includes wet and dry meadows), which were once found throughout the analysis area, have shifted to woody vegetation as a result of tree encroachment (USDA Forest Service 2008) (USDA Forest Service 2009). The desired condition is to restore the historic patterns of trees within grasslands. There is a need to reduce/remove tree encroachment from historic grasslands. To maintain Gambel oak, aspen and grasslands, there is a need to reduce canopy density by thinning ponderosa pine encroachment.

Fire regimes in the analysis area have shifted from frequent, low-intensity surface fires (Fire Regime Condition Class (FRCC I) to lower frequency, high-intensity crown fires (FRCC III). The desired condition is to have the majority of the analysis area in FRCC I. There is a need to reduce the potential for crown fire and high intensity surface fire. In order to maintain grassy openings and interspaces between trees (as well as promote Gambel oak and aspen), there is a need to move towards having frequent fires that burn with low to mixed severity in 0 to 35 year intervals across most of the analysis area. There is a need to strategically place treatments to reduce the effects of high intensity and high severity wildfire on resources (such as sensitive wildlife habitat and the urban interface).

Riparian systems on the Coconino portion of the analysis area have shifted from having large trees with open canopies to small and medium trees with closed canopies. Understory vegetation has been reduced (USDA Forest Service 2009). The desired condition is to promote large trees and understory vegetation. There is a need to reduce tree encroachment and increase/maintain grasses, forbs and woody vegetation. There is a lack of recharge in the aquifers associated with springs and seeps due to drought, lack of fire, and closed forest canopies which increase evapotranspiration. The desired condition is to maintain or restore functionality. In order to restore functionality, there is a need to reduce tree encroachment, maintain these features through natural processes, and limit future disturbance where possible and practical.

Throughout the analysis area, dry ephemeral channels have been degraded by past actions. The desired condition is to have fully functioning ephemeral channels which may promote the establishment of native vegetation and reduced sediment flows. There is a need to restore channels to a functioning condition that more closely resembles their natural state.

Throughout the analysis area, there are closed roads and unauthorized user-created routes present. Some road prisms, which were identified for closure in other environmental analyses, are eroding and contributing sediment. The desired condition is to return road prisms (as possible and practical) to their natural condition. There is a need to promote and maintain vegetation re-establishment and physically preclude future motorized use on select closed roads and user-created routes.

**Proposed Action**

In response to the purpose and need, the Coconino and Kaibab National Forests propose to conduct restoration activities within a 750,000 acre ponderosa pine ecosystem over approximately a 10-year period. The draft proposed action would:

* Cut trees using a range of treatment methods including group selection, intermediate and pre-commercial thinning. Treatments would focus on the most abundant tree size classes in order to achieve and/or set the analysis area on the trajectory to attain greater diversity (heterogeneity) in spatial patterns and size class distribution. Treatments would be designed to manage for old age trees in order to have and sustain as much old forest structure as possible across the landscape. Strategically-placed treatments would be designed to create tree groups and clumps that stimulate grass, forbs and individual tree growth. The strategic placement of treatments would maximize the ability to reduce fire risk. Trees cut would be mechanically piled, burned, lopped and scattered or removed.

* Cut trees using methods that promote and stimulate the growth of Gambel oak and aspen in order to improve vegetation diversity and wildlife habitat. Protective measures (such as fencing or tree felling) would be used to protect aspen from ungulate use during critical growth periods.

* Cut trees that have encroached on grasslands (including wet and dry meadows) to restore historic tree patterns using evidence based science as a guide. After treatment and when appropriate, fire would be used to maintain the grasslands.

* Cut trees within select Mexican spotted Owl Protected Activity Centers (PACs) to improve habitat.

* Conduct prescribed burning over a period of 10 years. Burning methods would include jackpot, pile burning and broadcast. Maintenance burns would occur as needed to maintain openings and interspaces between trees, maintain tree groups and clumps, and move towards and/or maintain Fire Regime Condition Class (FRCC) I.

* Utilize protective measures (such as fencing) to protect sensitive riparian resources including springs, seeps and restored channels.

* Restore dry ephemeral channels to reduce sediment delivery, improve watershed function and increase the potential for future riparian vegetation establishment.

* Utilize (and reconstruct as needed) existing closed roads. Use of the roads would be temporary. Once treatment has occurred, roads would be returned to a closed status.

* Reconstruct roads to access treatment areas. Reconstruction may include road blading, culvert installation or replacement and gravelling.

* Decommission select closed and unauthorized roads. Decommission methods would include installing signs, gates, rock barriers, ripping, or re-contouring of slopes to preclude future motorized use. Roads that have established vegetation may need minimal treatment while others may need to be entirely ripped, seeded and slopes re-contoured.

* Obliterate select unauthorized, user-created routes on the Kaibab National Forest. Mechanical equipment would be used to install rock barriers and/or rip, seed and re-contour slopes.

**Possible Alternatives**

A full range of alternatives to the proposed action, including a no-action alternative, will be considered. The no-action alternative represents no change and serves as the baseline for the comparison among the action alternatives.

**Responsible Official**

The Responsible Officials are the Coconino Forest Supervisor and Kaibab Forest Supervisor.

**Nature of Decision To Be Made**

Given the purpose and need of the project, the Forest Supervisors will review the proposed action, other alternatives and the environmental consequences in order to make the following decisions including determining: (1) Whether to select the proposed action or another alternative; (2) the location, design, and scheduling of proposed restoration activities; (3) the estimated products, if any, to be made available from the project; (4) mitigation measures, monitoring requirements and adaptive management actions; and, (5) whether forest plan amendments are needed.

**Scoping Process**

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Several workshops are planned for the purposes of discussing and refining the proposed action. Workshops begin on January 20, 2011 and continue throughout February 2011. February workshop dates are: February 2, 9, 16, and 24, 2011. All workshops begin at 1 p.m. and end at 5 p.m. With the exception of the February 9, 2011 meeting, all workshops will be held at the Coconino National Forest Supervisor's Office, 1824 S. Thompson Street, Flagstaff, AZ 86101. The February 9, 2011 workshop will be held at the Williams Ranger District, 742 South Clover Road, Williams, Arizona. Please contact Paula Cote' at (928) 226–4686 for additional information.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: January 19, 2011.

**Kristin M. Bail,**

*Deputy Forest Supervisor, Coconino National Forest.*

[FR Doc. 2011–1444 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Manti-La Sal National Forest Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Manti-La Sal National Forest Resource Advisory Committee will meet in Price, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to consider project proposals.

**DATES:** The meeting will be held February 16, 2011, and will begin at 9 a.m.

**ADDRESSES:** The meeting will be held in the conference room of the Utah Division of Wildlife Resources Building, 319 North Carbonville Road, Price, Utah. Written comments should be sent to Rosann Fillmore, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Comments may also be sent via e-mail to *rdfillmore@fs.fed.us* or via facsimile to 435–637–4940.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Visitors are encouraged to call ahead to 435–636–3525 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Rosann Fillmore, RAC coordinator, USDA, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501; 435–636–3525; e-mail *rdfillmore@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Consideration of Project Funding Proposals. (2) Public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 11, 2010 will have the opportunity to address the Comittee at those sessions.

Dated: January 19, 2011.

**Marlene DePietro,**

*Acting Forest Supervisor.*

[FR Doc. 2011–1459 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Recreation Resource Advisory Committees Charter Reestablishment

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to reestablish the Recreation Resource Advisory Committees.

**SUMMARY:** The Secretary of Agriculture intends to reestablish the charter for 5 Forest Service Recreation Resource Advisory Committees (Recreation RACs) pursuant to Section 4 of the Federal Lands Recreation Enhancement Act passed into law as part of the 2005 Consolidated Appropriations Act (Pub. L. 108–447) on December 8, 2004. The Recreation RACs operate in the Pacific Northwest, Pacific Southwest, Eastern, and Southern Regions of the Forest Service and the State of Colorado, and provide recreation fee recommendations to both the Forest Service and the Bureau of Land Management (BLM) as appropriate.

**DATES:** As required by the Federal Advisory Committee Act, charters for federal advisory committees must be renewed every 2 years. The current charter for the Recreation RACs expired on October 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Julie Cox, National Recreation RAC Coordinator, USDA Forest Service, Pacific Northwest Region, 333 SW 1st Avenue, Portland, OR 97208, 503–808–2984.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Lands Recreation Enhancement Act (REA), signed in December 2004, directs the Secretary of Agriculture, the Secretary of the Interior, or both to establish Recreation RACs, or use existing advisory

committees to perform the duties of Recreation RACs, in each State or region for Federal recreation lands and waters managed by the Forest Service or the BLM. These committees make recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

The REA grants flexibility to Recreation RACs by stating that the Secretaries:

- May have as many additional Recreation RACs in a State or region as the Secretaries consider necessary;
- Shall not establish a Recreation RAC in a State if the Secretaries determine, in consultation with the Governor of the State, that sufficient interest does not exist to ensure that participation on the committee is balanced in terms of the points of view represented and the functions to be performed; or
- May use a resource advisory committee established pursuant to another provision of law and in accordance with that law.

The Secretaries have signed an Interagency Agreement that authorizes the Forest Service to use existing BLM RACs and the BLM to use Forest Service Recreation RACs for the purposes stated in REA.

Dated: December 13, 2010.

**Pearlie S. Reed,**

*Assistant Secretary for Administration.*

[FR Doc. 2011–1407 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Atlantic Highly Migratory Species Voluntary Release Reports.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for approval of a new information collection).

*Number of Respondents:* 9,246.

*Average Hours per Response:* 5 minutes.

*Burden Hours:* 771.

*Needs and Uses:* This request is for approval of a new information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSFMCA, 16 U.S.C. 1801 et seq.) the National Marine Fisheries Service (NMFS) is to ensure that conservation and management measures promote, to the extent practicable, implementation of scientific research programs that include the tagging and releasing of Atlantic highly migratory species (HMS). The proposed information collection would allow the public to submit volunteered geographic information relating to HMS releases in order to populate an interactive Web site mapping tool. This Web page could attract visitors who are interested in Atlantic HMS and would contain information and links to promote HMS tagging programs that the general public could support or in which they could become involved. All submissions would be voluntary. Information would be used to raise awareness for releasing Atlantic HMS and HMS tagging programs, and would not be used as representative results.

*Affected Public:* Individuals or households; business or other for-profit organizations; not-for-profit institutions; state, local or tribal government.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 20, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–1494 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 1/6/2011 THROUGH 1/19/2011

| Firm name | Address | Date accepted for investigation | Products |
|---|---|---|---|
| Electro Soft, Inc | 113 Keystone Drive, Montgomeryville, PA 18936. | 07–Jan–11 | The firm manufactures printed circuit board assemblies, wire harnesses, cable assemblies, and electronic enclosure assemblies. |
| Heritage Mold, Inc | 3170 Forest View Road, Rockford, IL 61109–1642. | 12–Jan–11 | The firm manufactures plastic tooling for the hobby, electrical, telecommunications, automotive, military, personal care and consumer products industries. |

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 1/6/2011 THROUGH 1/19/2011—Continued

| Firm name | Address | Date accepted for investigation | Products |
|---|---|---|---|
| Hydra-Pro, Inc | 2260 W Commodore Way, Seattle, WA 98199. | 12–Jan–11 | The firm manufactures custom marine and offshore cranes. |
| Jensen Tuna Inc | 5885 Highway 311, Houma, LA 70360 | 06–Jan–11 | The firm processes fresh fish from basic cleaning to custom cuts and packaging. |
| Ormec Systems Corp | 19 Linden Park, Rochester, NY 14625–2712. | 12–Jan–11 | The firm develops, manufactures, and sells motion control products and services for factory automation. |
| ProtoCAM | 3848 Cherryville Road, Northampton, PA 18067. | 11–Jan–11 | The firm provides rapid prototyping, prototype development, and manufacturing engineering consulting services. |
| Silicon Carbide Products, Inc | 361 Daniel Zenker Drive, Horseheads, NY 14845. | 40553 | The firm custom manufactures various wear and corrosion resistant silicon carbide components for industrial customers. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: January 19, 2011.

**Miriam Kearse,**

*Eligibility Certifier.*

[FR Doc. 2011–1450 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–24–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 6–2011]**

### Foreign-Trade Zone 153—San Diego, CA; Application for Manufacturing Authority; Abbott Cardiovascular Systems, Inc. (Cardiovascular Device Manufacturing); Riverside County, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Diego, grantee of FTZ 153, requesting manufacturing authority on behalf of Abbott Cardiovascular Systems, Inc. (Abbott), located in Riverside County, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 18, 2011.

The Abbott facilities (3,500 employees, up to 9 million units per year) are located within three sites of FTZ 153: *Site 11* (54.2 acres) is located at 26531 Ynez Road, Temecula; *Site 12* (8.3 acres) is located at 42301 Zevo Drive, Temecula; and, *Site 13* (4.4 acres) is located at 30590 Cochise Circle, Murrieta. The facilities are used for the production of cardiovascular devices including stents, catheters and guidewires. Components and materials sourced from abroad (representing 5% of the value of the finished product) include: resins, plastic tubing, stent components, plastic packaging, plastic clips, nickel tubing and tantalum tubing (duty rate ranges from 2 to 6.5%). The application also requests authority to include a broad range of inputs and finished cardiovascular devices that Abbott may produce under FTZ procedures in the future. New major activity involving these inputs/products would require review by the FTZ Board.

FTZ procedures could exempt Abbott from customs duty payments on the foreign components used in export production. The company anticipates that some 50 percent of the plants' shipments will be exported. On its domestic sales, Abbott would be able to choose the duty rate during customs entry procedures that applies to the finished cardiovascular devices (duty free) for the foreign inputs noted above. FTZ designation would further allow Abbott to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 28, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 11, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: January 18, 2011.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–1506 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 5–2011]**

### Foreign-Trade Zone 49—Newark, NJ Area; Application for Subzone; LVMH Watch & Jewelry U.S.A., Inc. (Watches, Jewelry Products and Leather Goods); Springfield, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting special-purpose subzone status for the distribution facility of LVMH Watch & Jewelry U.S.A., Inc. (LVMH), located in Springfield, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 14, 2011.

The LVMH facility (119 employees/ 1.37 acres/59,884 sq.ft.) is located at 966 South Springfield Avenue in Springfield (Union County), New Jersey. The facility is used for the receipt, handling, packaging, and distribution of watches, jewelry products, leather goods (apparel, hand bags, wallets, cases), accessories, and luggage. All of the products are sourced from abroad and about 10 percent of the facility's shipments will be exported.

FTZ procedures could exempt LVMH from customs duty payments on the foreign goods exported from the proposed subzone. On domestic shipments, the company would be able to defer duty payments until the foreign merchandise is shipped from the facility and entered for U.S. consumption. Subzone status would further allow LVMH to realize logistical benefits through the use of weekly customs entry procedures. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is March 28, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 11, 2011.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: January 14, 2011.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–1396 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 07–2011]**

### Foreign-Trade Zone 124—Gramercy, LA; Application for Subzone; Halliburton Energy Services, Inc. (Barite Milling); Larose, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of South Louisiana, grantee of FTZ 124, requesting special-purpose subzone status for the barite manufacturing facility of Halliburton Energy Services, Inc. (Halliburton), located in Larose, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 18, 2011.

The Halliburton facility (13 employees, 12.2 acres, producing up to 540,000 tons of ground barite per year) is located at 1699 Highway 24, Larose, LA. The facility is used for the milling (heating grinding, crushing) of raw barite. The only component sourced from abroad (representing 75% of the value of the finished product) is raw barite (duty rate of $1.25 per metric ton).

FTZ procedures could exempt Halliburton from customs duty payments on the foreign components used in export production. The company anticipates that less than one percent of the plant's shipments will be exported. On its domestic sales, Halliburton would be able to choose the duty rate during customs entry procedures that applies to the finished product (duty-free) for the foreign input noted above. FTZ designation would further allow Halliburton to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 28, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 11, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: January 18, 2011.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–1390 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1737]**

### Grant of Authority for Subzone Status; Tulkoff Food Products, Inc. (Dehydrated Garlic), Baltimore, MD

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 Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to

qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas,* the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the City of Baltimore, Maryland, grantee of Foreign-Trade Zone 74, has made application to the Board for authority to establish a special-purpose subzone at the garlic products manufacturing facility of Tulkoff Food Products, Inc., located in Baltimore, Maryland (FTZ Docket 32–2009, filed 8–3–2009);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (74 FR 40567, 8–12–2009) 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 would be satisfied, and that the proposal would be in the public interest if subject to the restrictions listed below;

*Now, therefore,* the Board hereby grants authority for subzone status for activity related to the manufacture of garlic products at the Tulkoff Food Products, Inc., facility located in Baltimore, Maryland (Subzone 74C), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following conditions:

1. All foreign-origin dehydrated garlic admitted to the subzone in foreign status must be re-exported.

2. All foreign-origin dehydrated garlic to be used in production for U.S. consumption must be admitted to the subzone in domestic (duty-paid) status (19 CFR 146.43).

Signed at Washington, DC, this 12th day of January 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

ATTEST:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–1382 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE 3510–DS–P

### Foreign-Trade Zones Board

**[Order No. 1738]**

### Reorganization of Foreign-Trade Zone 22 Under Alternative Site Framework; Chicago, IL

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; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

*Whereas,* the Illinois International Port District, grantee of Foreign-Trade Zone 22, submitted an application to the Board (FTZ Docket 33–2010, filed 5/7/2010) for authority to reorganize under the ASF with a service area of Cook, Du Page, Grundy, Kankakee, Kendall, Lake and Will Counties and portions of McHenry and Kane Counties, Illinois, in and adjacent to the Chicago Customs and Border Protection port of entry, FTZ 22's existing Sites 1, 2, 5, 6, 7, 8, 10, 11, 13 and 15 would be categorized as magnet sites, existing Sites 3, 4, 9, 12, 14, 16, 17 and 18 as usage-driven sites, and the grantee proposes one initial usage-driven site (Site 19);

*Whereas,* notice inviting public comment was given in the **Federal Register** (75 FR 27983–27984, 5/19/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and 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 22 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 2, 5, 6, 7, 8, 10, 11, 13 and 15 if not activated by January 31, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 3, 4, 9, 12, 14, 16, 17, 18 and 19 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by January 31, 2014.

Signed at Washington, DC, this 12 day of January 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–1389 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–827]**

### Certain Cased Pencils From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 3, 2011, the United States Court of International Trade ("CIT") sustained in an unpublished judgment the Department of Commerce's ("the Department") results of redetermination as applied to respondents China First Pencil Co., Ltd. ("China First") and Shanghai Three Star Stationery Industry Corp. ("Three Star") and separate rate company Orient International Holding Shanghai Foreign Trade Co., Ltd. ("SFTC") pursuant to the CIT's remand order in *China First Pencil Co., Ltd.* v. *United States,* 721 F. Supp. 2d 1369 (Ct. Int'l Trade 2010) ("*China First*"). *See* Final Results of Redetermination Pursuant to Remand, Court No. 09–00325, dated December 20, 2010, available at *http://ia.ita.doc.gov/remands* ("Remand Results"); *China First Pencil Co., Ltd.* v. *United States,* Court No. 09–00325 (Ct. Int'l Trade January 3, 2011) (judgment). Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,*—F.3d—Court No. 2010–1024, –1090 (Fed. Cir. December 9, 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination and is amending the final results of the administrative review of

the antidumping duty order on certain cased pencils ("pencils") from the People's Republic of China covering the period of review ("POR") of December 1, 2006, through November 30, 2007 with respect to China First, Three Star, and SFTC. *See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33406 (July 13, 2009) ("*Final Results*"), and accompanying Issues and Decision Memorandum ("I&D Memorandum"), as amended by *Certain Cased Pencils from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review,* 74 FR 45177 (September 1, 2009).

**DATES:** *Effective Date:* January 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alexander Montoro or Nancy Decker, AD/CVD Operations, Office 1, Import Administration—International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0238 or (202) 482–0196.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 13, 2009, the Department published its *Final Results.* In the *Final Results,* the Department valued lindenwood pencil slats used by respondents China First, Three Star, and Shandong Rongxin Import & Export Co., Ltd. ("Rongxin"), with publicly available, published U.S. prices for American basswood lumber.[1] In *China First,* the CIT determined that the Department's surrogate value for pencils slats used in the *Final Results* was unsupported by substantial evidence and was not in accordance with law. The CIT remanded the Department to recalculate a surrogate value for pencil slats using data from "Paper and Stationery," an Indian trade publication. *See China First,* 721 F. Supp. 2d at 1375–77.

Moreover, in the *Final Results,* the Department valued black and color cores for China First, Three Star, and Rongxin using World Trade Atlas data.[2] In *China First,* the CIT determined that the Department's surrogate value for cores used in the *Final Results* was unsupported by substantial evidence and was not in accordance with law. The CIT remanded to the Department to identify separate surrogate values, supported by substantial evidence on the record, for black cores, color cores, thick black cores, and thick color cores. *See China First,* 721 F. Supp. 2d at 1379–1380.

Additionally, in the *Final Results,* the Department calculated a surrogate wage value in accordance with the regression-based methodology set forth in 19 CFR 351.408(c)(3).[3] In *Dorbest Ltd.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010) ("*Dorbest*"), the CAFC held that the Department's "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Tariff Act of 1930, as amended ("the Act") (*i.e.* 19 U.S.C. 1677b(c))}." *Dorbest,* 604 F.3d at 1372. Specifically, the CAFC interpreted section 773(c) of the Act to require the use of data from market economy countries that are both economically comparable to the non-market economy country at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department's regulation requires the Department to use data from economically dissimilar countries and from countries that do not produce comparable merchandise, the CAFC invalidated the Department's labor regulation at 19 CFR 351.408(c)(3). Following *Dorbest,* the Department requested a voluntary remand for its wage rate calculations for China First, Three Star, and Rongxin in the *Final Results.* The CIT granted that request and in *China First* remanded the *Final Results* with instructions that the labor wage value be recalculated in accordance with the decision in *Dorbest. See China First,* 721 F. Supp. 2d at 1373.

On December 20, 2010, the Department issued its final results of redetermination pursuant to *China First.* Pursuant to the *Dorbest* ruling and the remand in *China First,* we revised the wage rate calculation methodology to comply with the CAFC's interpretation of section 773 of the Act and have recalculated the pencil slats and cores surrogate values using prices from "Paper and Stationery." The Department's redetermination resulted in changes to the *Final Results* for China First's margin from 10.41 percent to 1.13 percent; for Three Star's margin from 59.62 percent to 3.06 percent; and for Rongxin's margin from 11.48 percent to 1.55 percent. Based on these revisions, the margin of SFTC has been revised from 32.21 percent to 1.66 percent. The CIT sustained the Department's remand redetermination with respect to China First, Three Star, and SFTC on January 3, 2011. *See China First Pencil Co., Ltd.* v. *United States,* Court No. 09–00325 (Ct. Int'l Trade January 3, 2011) (judgment). The CIT has not yet ruled on the Department's remand redetermination with respect to Rongxin.

## Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's January 3, 2011 judgment sustaining the Department's remand redetermination with respect to China First, Three Star, and SFTC constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondents were reviewed. *See Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review,* 75 FR 38980 (July 7, 2010).

## Amended Final Results

Because there is now a final court decision with respect to China First, Three Star, and SFTC, revised dumping margins are as follows:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| China First Pencil Company, Ltd. (which includes subsidiaries Shanghai First Writing Instrument Co., Ltd.; Shanghai Great Wall Pencil Co., Ltd.; and China First Pencil Fang Zheng Co., Ltd.) | 1.13 |

[1] *See Final Results* and accompanying I&D Memorandum at Comment 4a.

[2] *See Final Results* and accompanying I&D Memorandum at Comment 4b.

[3] *See Final Results* and accompanying I&D Memorandum at Comment 3.

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Shanghai Three Star Stationery Industry Co., Ltd | 3.06 |
| Orient International Holding Shanghai Foreign Trade Corporation | 1.66 |

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from China First, Three Star, and SFTC based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 11, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–1398 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

### Certain Preserved Mushrooms From the People's Republic of China; Extension of Time Limit for Final Results of Antidumping Duty New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Hoefke or Fred Baker, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–2924, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 31, 2010, the Department of Commerce (the Department) published in the **Federal Register** the initiation of two new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, covering the period of February 1, 2009, to January 31, 2010. *See Certain Preserved Mushrooms From the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 16075 (March 31, 2010). On October 29, 2010, the Department published in the **Federal Register** the preliminary results for the NSRs. *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews,* 75 FR 66729 (October 29, 2010). The current deadline for the final results of these reviews is January 20, 2011. These reviews cover Shandong Fengyu Edible Fungus Co., Ltd. and Zhangzhou Tongfa Foods Industry Co., Ltd.

#### Extension of Time Limits for Preliminary Results of Review

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1), require the Department to complete the final results of an NSR of an antidumping duty order within 90 days after the date on which the preliminary results were issued. However, the Department may extend the deadline for completion of the final results of an NSR to 150 days if it determines the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department finds these NSRs are extraordinarily complicated and, therefore, it requires additional time to complete the preliminary results. Specifically, the Department requires additional time to analyze the extensive entry and sales documentation for the two respondents, and various issues that arise from these documents. Accordingly, the Department is extending the time limit for completion of the preliminary results of these NSRs by 60 days (*i.e.,* until March 21, 2011).

This extension is issued and published in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

Dated: January 14, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–1399 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–913]**

### New Pneumatic Off-the-Road Tires From the People's Republic of China: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Andrew Huston or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4261 and (202) 482–1396, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 19, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the countervailing duty order on certain new pneumatic off-the-road tires from the People's Republic of China. *See New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 64268 (October 19, 2010) (*Preliminary Results*). This administrative review covers the period December 17, 2007, through December 31, 2008. The current deadline for the final results of review is February 16, 2011.

#### Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue final results in an administrative review of a countervailing duty order within 120 days after the date on which notice of the preliminary results were published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the

Department to extend the 120-day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department needs additional time to analyze novel issues related to creditworthiness, and the respondent's financial history. In accordance with section 751(a)(3)(A) of the Act, we have decided to extend the due date for the completion of the final results of this review from February 16, 2011, to April 17, 2011, 180 days after the date of publication of the *Preliminary Results.*

Because April 17, 2011, falls on a Sunday, it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of* "*Next Business Day*" *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for the completion of these final results is now no later than April 18, 2011.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 18, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–1397 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–937]**

### Citric Acid and Certain Citrate Salts From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Krisha Hill, John Hollwitz, or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4037, (202) 482–2336, or (202) 482–0650, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 30, 2010, the Department of Commerce ("the Department") published the initiation of the administrative review of the antidumping duty order on citric acid and certain citrate salts ("citric acid") from the People's Republic of China ("PRC"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). This review covers the periods November 20, 2008, through May 19, 2009, and May 29, 2009, through April 30, 2010. The preliminary results of review are currently due no later than January 31, 2011.

#### Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of citric acid from the PRC within this time limit. Among other things, additional time is needed to consider relevant evidence and parties' comments regarding selecting an appropriate surrogate country and surrogate values with which to value factors of production. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review, which is currently due on January 31, 2011, by 60 days. Therefore, the preliminary results are now due no later than April 1, 2011.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: January 18, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–1403 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–807]**

### Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tyler Weinhold or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1121 and (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

At the request of interested parties, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 44224 (July 28, 2010). The review covers the period June 1, 2009, through May 31, 2010. The preliminary results for this administrative review are currently due no later than March 2, 2011.

#### Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results up to 365 days.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to collect and analyze information regarding costs of production and other expenses needed for our preliminary results. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than June 30, 2011, which is 365 days from

the last day of the anniversary month of these orders. We intend to issue the final results in this review no later than 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 13, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–1394 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–815]**

### Light-Walled Rectangular Pipe and Tube From Turkey: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tyler Weinhold or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1121 and (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

At the request of interested parties, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). The review covers the period May 1, 2009, through April 30, 2010. The preliminary results for this administrative review are currently due no later than January 31, 2011.

#### Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results up to 365 days.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to collect and analyze information regarding the terms of sale and certain non-prime merchandise needed for our preliminary results. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than May 31, 2011, which is 365 days from the last day of the anniversary month of these orders. We intend to issue the final results in this review no later than 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 13, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–1384 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–863]**

### Honey From the People's Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* January 25, 2011.

**SUMMARY:** On September 10, 2010, the Department of Commerce (the "Department") published the preliminary results of these new shipper reviews ("NSR"), for the period of review ("POR") of December 1, 2008, through November 30, 2009.[1] Based on our analysis of the comments received, and after reexamining the *bona fides* of the sales made by Suzhou Shanding Honey Product Co., Ltd. ("Suzhou") and Wuhu Fenglian Co., Ltd. ("Fenglian"), the Department finds that that sales under review are not *bona fide* transactions; therefore, for these final results, the Department has rescinded the review with respect to Suzhou and Fenglian.

**FOR FURTHER INFORMATION CONTACT:** Katie Marksberry and Joshua Startup, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–7906 or (202) 482–5260, respectively.

#### Background

On September 2, 2010, the Department placed U.S. Customs and Border Protection ("CBP") data on the record of this review. The Department published its *Preliminary Results* on September 10, 2010. On September 22, 2010, and September 23, 2010, respectively, Suzhou and Fenglian submitted comments containing untimely factual information. On September 23, 2010, and September 24, 2010, respectively, the Department removed the untimely submissions from the record of this review. On September 29, 2010, the Department received surrogate value comments from the respondents. On October 1, 2010, the respondents collectively filed a letter requesting that the Department issue a second post-preliminary supplemental questionnaire. On October 7, 2010, the Department issued a letter to the respondents stating that it would not issue an additional questionnaire. On November 1, 2010, we received individually filed case briefs from Suzhou and Fenglian. On November 9, 2010, we received a single rebuttal brief from Petitioners.[2] We did not receive any case or rebuttal briefs from any other interested parties.

#### Extension of Time Limits

On October 6, 2010, the Department extended the time limit for these final results by 90 days to January 31, 2011.[3]

#### Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

[1] *See Honey From the People's Republic of China: Preliminary Intent To Rescind New Shipper Reviews,* 75 FR 55307 (September 10, 2010). Because the sales under review were made during the POR, but entered after the POR, the Department expanded the POR by thirty days.

[2] The petitioners are the members of the American Honey Producers Association and the Sioux Honey Association (hereinafter referred to as "Petitioners").

[3] *See Honey From the People's Republic of China: Extension of Time Limit for the Final Results for New Shipper Review,* 75 FR 61697 (October 6, 2010).

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

**Analysis of Comments Received**

All issues raised in the briefs by parties to these reviews are addressed in the "New Shipper Reviews of Honey from the People's Republic of China: Issues and Decision Memorandum," dated January 31, 2010, which is hereby adopted by this notice ("Issues and Decision Memo"). A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and Decision Memo is a public document and is on file in the Central Records Unit ("CRU"), main Commerce building, Room 7046, and is accessible on the Web at *http://www.trade.gov/ia*. The paper copy and electronic version of the memorandum are identical in content.

**Changes Since the Preliminary Results**

We have made no changes to our preliminary decision to rescind the NSRs of Suzhou and Fenglian.

**Final Rescission of New Shipper Reviews**

In the *Preliminary Results,* the Department preliminarily rescinded the NSRs for Suzhou and Fenglian, whose POR sales the Department found to be non-*bona fide*.[4] The Department received comments with respect to our preliminary decision to rescind the review. For these final results the Department continues to find the sales by Suzhou and Fenglian to be non-*bona fide*.[5]

**Cash-Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these final results for all shipments of subject merchandise from Suzhou or Fenglian entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Suzhou or Fenglian, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* $2.63 per kilogram); (2) for subject merchandise exported by Suzhou or Fenglian but not manufactured by Suzhou or Fenglian, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* $2.63 per kilogram); and (3) for subject merchandise manufactured by Suzhou or Fenglian, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(5).

Dated: January 13, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**Appendix I**

*General Issues*

Comment 1: Department's Treatment of Respondents' Post-Preliminary Request for Additional Supplemental Questionnaires

Comment 2: Department's Rejection of Respondents' Submission

Comment 3: Accuracy of the CBP Data

*Company Specific Issues*

Comment 4: Finding that Suzhou's POR Sale was Non-*Bona Fide*

Comment 5: Finding that Fenglian's Sale was Non-*Bona Fide*

[FR Doc. 2011–1388 Filed 1–24–11; 8:45 am]

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[4] *See Preliminary Results; see also* Memorandum to the File from Katie Marksberry, International Trade Specialist, through Catherine Bertrand, Program Manager, regarding "Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Bona Fide Analysis of the Sale Under Review for Suzhou Shanding Honey Product Co., Ltd.," dated September 2, 2010; *see also* Memorandum to the File from Josh Startup, International Trade Specialist, through Catherine Bertrand, Program Manager, regarding "Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Bona Fide Analysis of the Sale Under Review for Wuhu Fenglian Co., Ltd.," dated September 2, 2010.

[5] *See* Issues and Decision Memorandum at Comments 3 and 4.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–928]**

### Uncovered Innerspring Units From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 10, 2010, the Department of Commerce (the "Department") published the *Preliminary Results* of the first administrative review of the antidumping duty order on uncovered innerspring units ("innersprings") from the People's Republic of China ("PRC"), covering the period of review ("POR") August 6, 2008, through January 31, 2010.[1] The Department received no comments on the *Preliminary Results.* We have made no changes to our margin calculations for the final results of this review. The final weighted-average margins are listed below in the "Final Results of the Review" section of this notice.

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Toni Dach, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1655.

**Case History**

With the issuance of the *Preliminary Results,* the Department invited interested parties to comment on the *Preliminary Results.* No interested party submitted a case brief or comments, or requested a hearing. Therefore, the Department has made no changes from the *Preliminary Results* for these final results.

**Scope of Order**

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope

[1] *See Uncovered Innerspring Units From the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review,* 75 FR 69055 (November 10, 2010) ("*Preliminary Results*").

regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width, and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width, and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a "pocket" or "sock" of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010 or 7320.90.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

**Final Results of the Review**

As explained in the *Preliminary Results,* the Department finds that the following margins exist for the exporters under review for the period August 6, 2008, through January 31, 2010:

INNERSPRINGS FROM THE PRC

| Manufacturer/exporter | Margin (percent) |
|---|---|
| PRC-wide Entity [2] ..... | 234.51 |

**Assessment of Antidumping Duties**

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.*

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 234.51 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Orders**

This notice also serves as a final reminder to parties subject to the administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 11, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–1395 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

[2] The PRC-wide entity includes mandatory respondents Foshan Jingxin Steel Wire & Spring Co., Ltd. and Top One Manufacturing Factory, whom the Department found withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded the proceeding.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–580–818]**

### Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Partial Rescission of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request for administrative review received on August 31, 2010, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on corrosion-resistant carbon steel flat products from the Republic of Korea covering the period January 1, 2009, through December 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60078 (September 29, 2010) (*Initiation*). As a result of withdrawals of request for review, we are rescinding this review, in part, with respect to Dongbu Steel (Dongbu) and Pohang Iron & Steel Co., Ltd. (POSCO).

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone (202) 482–3338.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 31, 2010, Dongbu and POSCO requested that the Department conduct an administrative review of their companies. On September 29, 2010, the Department initiated the review. *See Initiation.* On September 27, 2010, and October, 1, 2010, Dongbu and POSCO, respectively, withdrew their

requests for administrative review and partial revocation of the countervailing duty order on corrosion-resistant carbon steel flat products from the Republic of Korea.

**Partial Rescission of Review**

Under 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.

The *Initiation* was published on September 29, 2010. The respondent companies submitted a timely request for withdrawal on September 27, 2010, and October 1, 2010. No other party requested administrative reviews of Dongbu or POSCO. Therefore, we are rescinding, in part, this review of the countervailing duty order of corrosion-resistant carbon steel flat products from the Republic of Korea with regard to Dongbu and POSCO. This review will continue with respect to Hyundai HYSCO Ltd. (HYSCO).

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Patrol (CBP) 15 days after publication of this notice. The Department will direct CBP to assess countervailing duties at the cash deposit rate in effect on the date of entry for entries during the period January 1, 2009, through December 31, 2009.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 14, 2011.

**Gary Taverman,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–1393 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–801]**

### Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On February 1, 2005, the Department of Commerce (“Department”) published in the **Federal Register** the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003) (“*Order*”). The Department is conducting two new shipper reviews (“NSR”) of the *Order,* covering the period of review (“POR”) of August 1, 2009, through February 15, 2010. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

**DATES:** Effective Date: January 25, 2011

**FOR FURTHER INFORMATION CONTACT:** Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5403.

**SUPPLEMENTARY INFORMATION:**

**General Background**

On March 17, 2010, and March 19, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the “Act”), and 19 CFR 351.214(c), the Department received NSR requests from Thien Ma Seafood Company, Ltd. (“THIMACO”) and International Development & Investment Corporation (“IDI”) (collectively, “Respondents”), respectively. THIMACO and IDI certified that they were the producers and exporters of the subject merchandise upon which the request was based.

On March 29, 2010, the Department published the initiation NSR on frozen fish fillets from Vietnam covering IDI and THIMACO. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 15416 (March 29, 2010).

On March 25, 2010, the Department issued its original antidumping duty questionnaire to THIMACO and IDI. Between April 15, 2010, and September 29, 2010, THIMACO and IDI submitted responses to the original and supplemental sections A, C, and D antidumping duty questionnaires.

**Extension of Time Limits**

On August 9, 2010, the Department extended the deadline for the preliminary results of these reviews by 120 days, to January 17, 2011. However, the notice incorrectly listed the deadline for the preliminary results of the reviews as January 17, 2010, rather than January 17, 2011. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty New Shipper Reviews,* 74 FR 47771 (August 9, 2010). The Department therefore published a correction, noting the proper deadline as January 17, 2011. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Correction of Date for the Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty New Shipper Reviews,* 75 FR 57261(September 20, 2010).

**Surrogate Country and Surrogate Values**

On July 28, 2010, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (“FOP”). On September 10, 2010, IDI, THIMACO, and Petitioners [1] submitted surrogate country comments and surrogate value (“SV”) data. On September 20, 2010, IDI, THIMACO, and Petitioners submitted rebuttal comments to the September 10, 2010, submissions.

**Verification**

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the farming FOPs for THIMACO between November 2, 2010, and November 5, 2010. *See* Memorandum to the File, From Alan Ray, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Verification of Factors of Production Responses of Thien Ma Seafood Company Ltd., in the Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Verification Report”), issued concurrently with these preliminary results.

**Scope of the Order**

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus.* Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless

[1] The Catfish Farmers of America and individual U.S. Catfish Processors: America’s Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (collectively, “Petitioners”).

fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").[2] The order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

**Non-Market Economy Country Status**

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

**Separate Rate Determinations**

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

*A. Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this review, THIMACO and IDI submitted complete responses to the separate rates section of the Department's NME questionnaire. The evidence submitted by IDI and THIMACO includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding each company's operations and selection of management. The evidence provided by IDI and THIMACO supports a finding of a *de jure* absence of government control over each of its export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

*B. Absence of De Facto Control*

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In their questionnaire responses, IDI and THIMACO each submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) IDI and THIMACO set their own export prices independent of the government and without the approval of a government authority; (2) IDI and THIMACO retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses; (3) IDI and THIMACO have a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of either company's use of export revenues. Therefore, the Department preliminarily finds that IDI and THIMACO have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

**New Shipper Review Bona Fide Analysis**

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by IDI and THIMACO in these NSRs. We found that the sales by IDI and THIMACO were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by IDI and THIMACO, and our verification, as well the company's eligibility for separate rates (*see* Separate Rate Determinations section above), we preliminarily determine that IDI and THIMACO have met the requirements to qualify as new shippers during this POR. Therefore, for the purposes of these preliminary results of review, we are treating IDI's and THIMACO's sales of subject merchandise to the United States as appropriate transactions for these NSRs.[3]

[2] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

[3] For more detailed discussion of this issue, *see* Memorandum to the File, From Alan Ray, Case Analyst, Office 9, Through Alex Villanueva, Program Manager, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the

Continued

**Surrogate Country**

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Regarding the "level of economic development," the Department places primary emphasis on per capita gross national income ("GNI") as the measure of economic comparability.[4] Using per capita GNI, the Department determined that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia are countries comparable to Vietnam in terms of economic development.[5]

As we have stated in prior administrative review determinations, there is no world production data of *Pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. Therefore, absent world production data, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a significant producer.[6] In this case, we have determined to use the broader category of frozen fish fillets data as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list.[7] Of the non-exhaustive list of economically comparable countries mentioned above, all countries were also found to be significant producers. *See* "Factor Valuations" section below.

After applying the first two selection criteria, if more than one country remains, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). In this case, the whole fish input is the most significant input because it accounts for the largest percentage of NV as fish fillets are produced directly from the whole live fish. As such, we must consider the availability and reliability of the SVs for whole fish on the record. This record does not contain any data for whole live fish for Indonesia, India, Sri Lanka, and Pakistan. Therefore, these countries will not be considered for primary surrogate country purposes at this time. However, this record does contain whole fish SV data from both Bangladesh and the Philippines.

**Bangladesh**

Respondents placed on the record of this segment of the review the *Economics of Aquaculture Feeding Practices in Selected Asia Countries: FAO Technical Paper 505* (Rome, 2007) ("*FAO Report*"). *See* Respondents' September 10, 2010, Surrogate Country and Value Comments.

**Philippines**

In the preliminary results of the sixth administrative and new shipper reviews, the Department selected the Philippines as the primary surrogate country based on an analysis of the Bangledeshi and Philippine data on the record at the time of the preliminary results.[8] The Philippine data submitted is the *Fisheries Statistics of the Philippines, 2006–2008,* published by the Bureau of Agricultural Statistics, Department of Agriculture ("*Fisheries Statistics*"), in November 2009. In the *6th AR Prelim,* the Department found that the *Fisheries Statistics* satisfies each of the criteria that the Department considers in selecting a surrogate country and is closer to the POR than the *FAO Report* is to the POR.

**Analysis**

First, we note that both the *FAO Report* data and the *Fisheries Statistics* data are publicly available, tax- and duty-exclusive, and from an approved surrogate country. Therefore, we examined each source with respect to the broad market average, specificity, and contemporaneity. With respect to the broad market average, we find that the data from both the *FAO Report* and the *Fisheries Statistics* are considered broad market averages. As we have stated in prior reviews, the *FAO Report* data were obtained directly from 60 fish farmers located in a region that produces fish in Bangladesh. The *FAO Report* states why this particular region was selected (*i.e.,* importance of this region in *Pangas* farming, the availability of hatchery produced fry, availability of ponds, warm climate, cheap and abundant labor). *See FAO Report* at 38. Similarly, the Philippine data were collected from 34 respondents (*i.e.,* "farmers, operators, or caretakers. Other possible respondents are aqua farm traders and persons knowledgeable of aquaculture production in the locality.") *See* Petitioners' September 10, 2010 submission. Although we recognize that the Philippine data volume is only 12 metric tons, while the Bangladeshi data is 178 metric tons, for these preliminary results, we find that both of these sources are significant broad market averages because they represent national level data of similar quality using similar collection methods (*i.e.,* interviews, questionnaires, *etc.*).

With respect to specificity, the Bangladeshi data in the *FAO Report* specifically identify the whole live fish examined as *Pangasianodon Hypopthalmus,* which is one of the fish

Socialist Republic of Vietnam: Thien Ma Seafood Company Ltd., ("THIMACO") dated January 17, 2010, and Memorandum from Alan Ray, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: International Development & Investment Corporation ("IDI"), dated January 17, 2010.

[4] It is Departmental practice, pursuant to 19 CFR 408, to use per capita GNI, rather than per capita gross domestic product, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and, thus, level of economic development. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61716 at n. 2. (October 19, 2006) ("*Antidumping Methodologies Notice*").

[5] The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. *See* Memorandum from Carol Showers, Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets ("Fish Fillets") from the Socialist Republic of Vietnam, dated June 4, 2010.

[6] *See Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 11847 (March 12, 2010) (unchanged for the final determination, 75 FR 45468 (August 2, 2010)).

[7] Global Trade Atlas ("GTA") data from 2007 is the only year in which all countries have data for comparison. 2008 and 2009 data contains gaps preventing the Department from making appropriate comparisons. *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Alan Ray, Case Analyst, Office 9: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated January 17, 2011 ("Surrogate Values Memo") at Attachment I.

[8] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Sixth Antidumping Duty Administrative and Sixth New Shipper Review,* 75 FR 56062 (September 15, 2010) ("*6th AR Prelim*").

fillets species identified in the scope of the *Order.* The Philippine data in the *Fisheries Statistics* are identified as *Pangasius,* which is the genus name for the fish fillets subject to the *Order.* First, we note that *Pangasius* is a genus name and *Pangasianodon Hypopthalmus* is a species in that genus. In prior reviews, we used whole fish SV data identified as *Pangas* and found it comparable to the fish input used by the respondents. *See 3rd AR Final Results* at Comment 4.[9] In this case, although the whole fish data from Bangladesh are more specific to the input used by Respondents in producing fish fillets, we note that the record does not contain any information that would lead us to preliminarily determine that any difference between the two sources would necessarily generate a difference in price. Moreover, *Pangasianodon Hypopthalmus* is considered a component of *Pangasius* so it is reasonable to find that the *Pangasius* price from the Philippines in the *Fisheries Statistics* is likely to include *Pangasianodon Hypopthalmus* and other comparable species names also listed in the *Order.*

Finally, with respect to contemporaneity, we find that the Philippine data are closer to the POR as they are based on data collected in calendar year 2008. *See Fisheries Statistics.* The Bangladeshi data in the *FAO Report* are from October 2005 through February 2006. Therefore, the data from the Philippines are closer to the POR, than the Bangladeshi data.

After examining all the factors considered in selecting the SV for fish as part of our surrogate country analysis, we find that the data available from the Philippines for the whole live fish represent the best SVs for these preliminary results. Given that Philippines data are closer to the POR, as equally a broad market average as the Bangladeshi data, and of a similar genus of the fish used by Respondents to produce fish fillets, we preliminarily select the Philippines as the primary surrogate country.

**Affiliation**

Section 771(33) of the Act provides that:

> The following persons shall be considered to be 'affiliated' or 'affiliated persons':
> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
> (B) Any officer or director of an organization and such organization;
> (C) Partners;
> (D) Employer and employee;
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;
> (G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restrain or direction over the other person."

Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if (1) the producers are affiliated, (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. *See* 19 CFR 351.401(f)(1) and (2).

We preliminarily find Golden Fish Seafood Company Limited ("GOFICO") and THIMACO to be affiliated within the meaning of section 771(33)(E) of the Act, based on ownership. THIMACO wholly owns GOFICO. *See* THIMACO's April 15, 2010, section A questionnaire response. With respect to whether the two companies should be considered a single entity, we look to the factors set forth in 19 CFR 351.401(f)(1) and (2). Those factors include the following: (1) If two or more affiliated producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production; (2) the level of common ownership; (3) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (4) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or signification transactions between the affiliated producers.

THIMACO and GOFICO's relationship satisfies each of the factors we consider in determining whether companies should be considered a single entity. *See id.* Because both THIMACO and GOFICO have production facilities for identical products; share 100 percent common ownership; share 100 percent board members and certain management employees; and are intertwined in sharing of employees and facilities, and conducted significant transactions with each other during the POR, we find that THIMACO and GOFICO should be treated as a single entity in these preliminary results.

**U.S. Price**

*Export Price*

For THIMACO's and IDI's export price ("EP") sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated EP based on cost and freight foreign port price to the first unaffiliated purchaser in the United States. We also deducted foreign inland freight, and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c) of the Act. We reviewed the movement expenses incurred in Vietnam by IDI and THIMACO and find that they were provided by an NME vendor or paid for using Vietnamese currency. Thus, we based the deduction of these movement charges on SVs. *See* Surrogate Values Memo for details regarding the SVs for movement expenses.

**Normal Value**

*1. Methodology*

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

[9] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479 (March 24, 2008) and accompanying Issues and Decision Memorandum ("*3rd AR Final Results*").

IDI reported the inputs beginning with the food-size fish because it is only a processor of fish fillets and had no hatchery or farming FOPs during the POR. Therefore, it only reported FOPs associated with the processing and packing stages of production. As such, the Department will account for all of IDI's reported inputs in the NV calculation.

THIMACO reported the inputs beginning with fish fry and fingerlings, as it operated farms and processing facilities during the POR. *See* Verification Report and THIMACO's section D questionnaire response. However, at verification, it was found that THIMACO had provided unreliable farming FOPs. Specifically, four out of eight of the farming factors that THIMACO reported were found to not be accurate for the purpose of calculating NV. *See* Verification Report at 2. Therefore, the Department will account for THIMACO's reported inputs in the calculation of NV beginning with the purchase of food-size fish at the processing stage of production.

*2. Factor Valuations* [10]

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by IDI and THIMACO during the POR, although for THIMACO, NV was calculated beginning at the processing stage of production. The Department valued the processing FOPs using publicly available Philippine and Bangladeshi SVs. The Philippines was our first surrogate country source from which to obtain data to value inputs, and when data were not available from there, we used Bangladeshi sources. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs. In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the SVs a surrogate freight cost, and in the case of import statistics SVs, using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with court decision in *Sigma Corp.* v. *United States,* 24 C.I.T. 97, 86 F. Supp. 2d 1344 (CIT 2000). Where we did not use import statistics, we calculated freight based on the reported distance from the supplier to the factory. For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[11] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[12] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For further detail, *see* Surrogate Values Memo.

We valued FOPs in the preliminary results of this review using SVs, as follows (*see* Surrogate Values Memo for more specific details). Except as noted below, we valued raw materials and packing materials using weighted-average Philippines import values derived from GTA and Bangladeshi import values derived from U.N. Comtrade.[13] The Philippines import statistics that we obtained from GTA were published by the Philippines National Statistics Office and are contemporaneous with the POR.[14] The Bangladeshi import statistics were published by the *2005 Statistical Yearbooks of Bangladesh,* published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC") in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing Respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to Vietnam and that are significant producers of comparable merchandise.

For the preliminary results of these NSRs, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to Vietnam, and significant producers of comparable merchandise.[15] A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Values Memo. The Department calculated a simple average industry-specific wage rate of $1.09 for these preliminary results. Specifically,

[10] In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping NSR, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of the preliminary results.

[11] *See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong.,* 2nd Sess. (1988) ("*OTCA 1988*") at 590.

[12] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *see Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; *see Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

[13] Available online at: *http://www.gtis.com/gta.htm.*

[14] *See* Surrogate Values Memo.

[15] The Department notes that for purposes of valuing wage rates alone, the Department believes the use of multiple data points is important given the nature of that input. *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208 (November 17, 2010) and accompanying Issues and Decision Memorandum at Comment 4f. Accordingly, the Department's current practice is to define significant producers as any country with exports of comparable merchandise in deriving a list of wage rates to use in its calculations. For all other inputs, the Department continues to review several factors, and not exports alone, in determining whether or not a country is a significant producer of comparable merchandise.

for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 05 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to Vietnam and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 (Fishing, operation of fish hatcheries and fish farms; service activities incidental to fishing) to be the best available wage rate SV on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to Vietnam and significant producers of comparable merchandise: Bangladesh, Bolivia, Cote d'Ivoire, Egypt, Ghana, Guyana, India, Indonesia, Kenya, Mali, Mauritania, Nicaragua, Pakistan, the Philippines, Sao Tome and Principe, Senegal, Sri Lanka, Sudan, Yemen, and Zambia. For further information on the calculation of the wage rate, *see* Surrogate Values Memo.

The Department is using the financial statements of Bluefin Seafood Export, Inc. and RDEX Food International Phils., Inc. for the calculation of the surrogate financial ratios. Both of these companies are Philippine fish processors. Truck movement expenses were valued using the "Cost of Doing Business in Camarines Sur." Brokerage and handling was valued using a price listed by the Philippine Tariff Commission. Finally, marine insurance was valued using a price listed by RJG Consultants.

Philippine and other SVs denominated in foreign currencies have been converted to U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates can be accessed at the website of Import Administration.[16] For further details regarding the SVs used for these preliminary results, *see* Surrogate Values Memo.

**Preliminary Results of Review**

The Department has preliminarily determined that the following dumping margins exist for the period August 1, 2009, through February 15, 2010:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

| Manufacturer/exporter | Per unit assessment |
|---|---|
| THIMACO | 3.25 |
| IDI | 3.96 |

**Disclosure**

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Comments**

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of these NSRs, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of these NSRs, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party within ten days of the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[17]

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of these NSRs. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of these NSRs, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 19 CFR 351.214(i).

**Assessment Rates**

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis.[18] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer-specific assessment rate calculated in the final results of these reviews is above *de minimis.*

**Cash-Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of these NSRs for all shipments of subject merchandise from THIMACO and IDI entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by THIMACO, the cash deposit rate will be $3.25/Kg; and (2) for subject merchandise produced and exported by IDI, the cash deposit rate will be $3.96/Kg. If the cash deposit rate calculated in the final results is zero or *de minimis,* no cash deposit will be required for those specific producer-exporters. These cash deposit requirements, when

[16] The Import Administration Web site is available at: *http://ia.ita.doc.gov/exchange/index.html.*

[17] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[18] We divided the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of its responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 14, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–1381 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–912]**

## Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Rescission of Changed Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* January 25, 2011.

**SUMMARY:** On June 16, 2010, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of a changed circumstances review ("CCR") of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") in order to determine whether Shandong Linglong Tyre Co., Ltd. ("Shandong Linglong") is the successor-in-interest to Zhaoyuan Leo Rubber Co., Ltd. ("Leo Rubber") for the purpose of determining antidumping duty liability.[1] On December 8, 2010, Ling Long North America LLC, doing business as Atlas Tire, an affiliated importer of record and the requesting party, submitted a request to rescind this CCR. The Department is now rescinding this CCR.

**FOR FURTHER INFORMATION CONTACT:** Raquel Silva or Erin Begnal, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6475 or (202) 482–1442.

**Background**

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on OTR tires from the PRC.[2] As part of the *Order,* Leo Rubber, as a separate rate respondent that was not individually reviewed, was granted separate rate status and received the weighted-average dumping margin of 12.91 percent.[3]

On April 21, 2010, Atlas Tire filed a submission requesting that the Department conduct a CCR of the *Order.*[4] On June 16, 2010, the Department initiated a CCR of the antidumping duty order on OTR tires.[5] On December 8, 2010, Atlas Tire withdrew its request for a CCR.[6]

**Scope of the Order**

The products covered by the order are new pneumatic tires designed for off-the-road ("OTR") and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[7] combine harvesters,[8] agricultural high clearance sprayers,[9] industrial tractors,[10] log-skidders,[11] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[12] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[13] front end loaders,[14] dozers,[15] lift trucks, straddle carriers,[16] graders,[17] mobile cranes,[18] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[19] The

[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation of Changed Circumstances Review,* 75 FR 34098 (June 16, 2010) ("*Initiation Notice*").

[2] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008) ("*Order*").

[3] *See id.* at 51627.

[4] *See* Letter from Atlas Tire to the Department regarding: Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, Request for Changed Circumstances Review, dated April 21, 2010.

[5] *See Initiation Notice.*

[6] *See* Letter from Atlas Tire to the Department regarding: Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, Rescission Request, dated December 8, 2010.

[7] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[8] Combine harvesters are used to harvest crops such as corn or wheat.

[9] Agricultural sprayers are used to irrigate agricultural fields.

[10] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[11] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[12] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[13] Haul trucks, which may be either rigid frame or articulated (*i.e.,* able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[14] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[15] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.,* typically around construction sites. They can also be used to perform "rough grading" in road construction.

[16] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[17] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[18] *i.e.,* "on-site" mobile cranes designed for off-highway use.

[19] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (e.g., tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type [20] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

*Prefix Letter Designations*

- P—Identifies a tire intended primarily for service on passenger cars;
- LT—Identifies a tire intended primarily for service on light trucks; and,
- ST—Identifies a special tire for trailers in highway service.

*Suffix Letter Designations*

- TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″;
- MH—Identifies tires for Mobile Homes;
- HC—Identifies a heavy duty tire designated for use on "HC" 15″ tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

**Rescission of Changed Circumstances Review**

Although it does not specifically reference changed circumstances reviews, section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party requesting the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. The Department's practice has been to apply this 90-day deadline to changed circumstances review rescission requests.[21] However, 19 CFR 351.213(d)(1) also provides that the Department may extend the 90-day time limit for withdrawing the request for an administrative review if we determine that it is reasonable to do so. In this case, Atlas Tire requested a rescission of this review on December 8, 2010, which is beyond 90 days from the date of initiation. However, we note that no interested party, including the petitioner, has objected to Atlas Tire's rescission request. Additionally, the Department has not expended significant resources conducting this review. Therefore, we determine that it is reasonable to extend the 90-day time limit in this instance. Consequently, the Department has accepted Atlas Tire's rescission request in this case as timely and is now rescinding this CCR. U.S. Customs and Border Protection will continue to suspend entries of subject merchandise at the appropriate cash deposit rate for all entries of OTR tires from the PRC.

**Notification**

This notice also serves as a final reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: January 14, 2011.

**Gary Taverman,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–1401 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

[20] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

[21] *See, e.g., Certain Frozen Warmwater Shrimp from India: Notice of Rescission of Antidumping Duty Changed Circumstances Review,* 75 FR 51756 (August 23, 2010).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Sea Grant Advisory Board; Meeting

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Advisory Board (Board). Board members

will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the National Sea Grant College Program Web site at *http://www.seagrant.noaa.gov/leadership/advisory_board.html.*

**DATES:** The announced meeting is scheduled 8 a.m.–5 p.m. EST Tuesday, February 8–8:30 a.m.–11:45 a.m. EST Wednesday, February 9, 2011.

**ADDRESSES:** The meeting will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005.

*Status:* The meeting will be open to public participation with a 15-minute public comment period on February 8 at 4:45 p.m. EST (check Web site to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Officer by January 31, 2011 to provide sufficient time for Board review. Written comments received after January 31, 2011, will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11843, Silver Spring, Maryland 20910, (301) 734–1082.

**SUPPLEMENTARY INFORMATION:** The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

The agenda for this meeting can be found at *http://www.seagrant.noaa.gov/leadership/advisory_board.html.*

Dated: January 19, 2011.

**Mark E. Brown,**

*Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2011–1418 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–KA–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA075**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Test Pile Program

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received an application from the U.S. Navy (Navy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving activities as part of a test pile program. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Navy to take, by Level B Harassment only, five species of marine mammals during the specified activity.

**DATES:** Comments and information must be received no later than February 24, 2011.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *ITP.Laws@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The Navy has prepared a draft Environmental Assessment (EA) titled "Test Pile Program NBK Bangor Waterfront, Naval Base Kitsap Bangor, Silverdale, WA", and has prepared a draft Essential Fish Habitat Assessment titled "Test Pile Program NBK Bangor Waterfront Draft Essential Fish Habitat Assessment". These associated documents, prepared in compliance with the National Environmental Policy Act (NEPA) and Magnuson-Stevens Fishery Conservation and Management Act, respectively, are also available at the same internet address. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by

which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

NMFS received an application on November 2, 2010 from the Navy for the taking of marine mammals incidental to pile driving in association with a test pile program in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). This test pile program is proposed to occur between July 16, 2011 and October 31, 2011. Six species of marine mammals may be present within the waters surrounding NBKB: Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), killer whales (*Orcinus orca*), Dall's porpoises (*Phocoenoides dalli*), and harbor porpoises (*Phocoena phocoena*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion. Steller sea lions are present only from fall to late spring (November–June), outside of the project's timeline (July 16–October 31). Additionally, while the Southern Resident killer whale (listed as endangered under the Endangered Species Act [ESA]) is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in decades and was therefore excluded from further analysis. Only the five species which may be present during the project's timeline may be exposed to sound pressure levels associated with vibratory and impulsive pile driving, and will be analyzed in detail in this document.

The Navy proposes to install up to 29 test and reaction piles at NBKB to gather geotechnical and noise data to validate the design concept for the building of a new Explosive Handling Wharf (EHW–2), as well as for future projects at the NBKB waterfront. The test pile program will require a maximum of forty work days for completion. The forty work day duration of the program includes the time for the initial pile installations, time for performing loading tests, and time to remove all of the test piles. The pile lengths will range from 100–197 ft (30–60 m), and range in diameter from 30–60 in (0.8–1.5 m). The test pile program will involve driving eighteen steel pipe piles, at pre-determined locations within the proposed footprint of EHW–2. Some of the initial eighteen piles will be removed and re-driven as part of lateral load and tension tests. A total of eleven piles will be installed to perform lateral load and tension load tests. All piles will be driven with a vibratory hammer for their initial embedment depths, and select piles will be impact driven for their final 10–15 ft (3–4.6 m) for proofing. "Proofing" involves driving a pile the last few feet into the substrate to determine the capacity of the pile. The capacity during proofing is established by measuring the resistance of the pile to a hammer that has a piston with a known weight and stroke (distance the hammer rises and falls) so that the energy on top of the pile can be calculated. The blow count in "blows per inch" is measured to verify resistance, and pile compression capacities are calculated using a known formula. Noise attenuation measures (*i.e.,* bubble curtain) will be used during all impact hammer operations and on two of the vibratory-driven piles. Hydroacoustic monitoring will be performed to assess effectiveness of noise attenuation measures.

For pile driving activities, the Navy used NMFS-promulgated thresholds for assessing pile driving impacts (NMFS 2005b, 2009), outlined later in this document. The Navy used recommended spreading loss formulas (the practical spreading loss equation for underwater sounds and the spherical spreading loss equation for airborne sounds) and empirically-measured source levels from other 30–72 in (0.8–1.8 m) diameter steel pile driving events to estimate potential marine mammal exposures. Predicted exposures are outlined later in this document. The calculations predict that no Level A harassments would occur associated with pile driving activities, and that 1,180 Level B harassments may occur during the test pile program from underwater sound. No incidents of harassment were predicted from airborne sounds associated with pile driving. Some assumptions (including marine mammal densities and other assumptions) used to estimate the exposures are conservative, and may overestimate the potential number of exposures and their severity.

**Description of the Specified Activity**

NBKB is located on the Hood Canal approximately twenty miles (32 km) west of Seattle, WA (see Figures 1–1 and 1–2 in the Navy's application). NBKB provides berthing and support services to Navy submarines and other fleet assets. The entirety of NBKB, including the land areas and adjacent water areas in the Hood Canal are restricted from general public access. The Navy proposes a test pile program to support the design of the future construction of EHW–2. The proposed actions with the potential to affect marine mammals within the waterways adjacent to NBKB that could result in harassment under the MMPA are vibratory and impulsive pile driving operations associated with the test pile program. The proposed pile driving activities will occur between July 16, 2011 and October 31, 2011. All in-water construction activities within the Hood Canal are only permitted during July 16–February 15 in order to protect spawning fish populations. The further restriction of in-water work window proposed by the Navy avoids the possibility of incidental harassment of Steller sea lions. The Eastern Distinct Population Segment (DPS) of Steller sea lions, present in the Hood Canal outside of the proposed project time period, is listed as threatened under the ESA.

As part of the Navy's sea-based strategic deterrence mission, the Navy Strategic Systems Programs directs research, development, manufacturing, test, evaluation, and operational support of the TRIDENT Fleet Ballistic Missile program. Maintenance and development of necessary facilities for handling of explosive materials is part of these duties. The proposed action for this IHA request is to install and remove up to 29 test and reaction piles, conduct loading tests on select piles, and measure in-water sound propagation parameters (e.g., transmission loss) during pile installation and removal. Geotechnical and sound propagation data collected during pile installation and removal will be integrated into the design, construction, and environmental planning for the Navy's proposed EHW–2. Future construction projects at the NBKB waterfront may also benefit from the geotechnical data gathered for use in their environmental planning documentation. The Navy proposes to install the test piles in the location planned for the future EHW–2, which will be adjacent to the existing

Explosive Handling Wharf (EHW–1) at NBKB. The test pile program will require a maximum of forty work days for completion. Hydroacoustic monitoring will be undertaken to assess the effectiveness of noise attenuation measures. The presence of marine mammals will also be monitored during pile installation and removal.

The test pile program has been designed to collect adequate geotechnical and sound propagation data. Under the proposed action, the Navy will install 29 test and reaction piles in the Hood Canal. The pile lengths will range from 100–197 ft (30–60 m), and range in diameter from 30–60 in (0.8–1.5 m). All piles will subsequently be removed at the completion of the test pile program. These test piles will be situated throughout the footprint of the future EHW–2, currently in the preliminary planning process. Figure 1–3 of the Navy's application shows in detail the locations of each of the test piles.

The installation of the test piles will involve driving eighteen steel pipe piles into the substrate. Additionally, three lateral load and two tension load tests will be performed. The lateral load test involves measurements of lateral displacement versus load for the piles. The lateral load tests will require re-installing two 60-in (1.5 m) diameter piles and one 48-in (1.2 m) diameter pile. The tension load test measures the vertical capacity of a pile. The tension load tests will require driving four reaction piles for each of the two tension load tests. The lateral load test in combination with the tension load test will result in the installation of an additional eleven piles. The Navy expects that some of the initial eighteen test piles will be removed and re-driven as part of lateral load and tension tests. Please see the Navy's application for a diagram of the lateral load and tension load tests, and for more specific information regarding each test pile (Figure 1–4 and Table 1–1 of the Navy's application, respectively).

According to the Navy, previous soil boring studies, as well as experience at EHW–1, confirms that the substrate appears to be relatively consistent in nature across the site. Therefore, all of the piles will be driven by a vibratory hammer to their initial embedment depths. The eighteen test piles would likely require the use of an impact hammer to drive the piles the remaining 10–15 ft (3–4.6 m) into the substrate and for proofing. The impact driver will perform a few blows to warm up the hammer and a number of blows to verify capacity. A Pile Dynamic Analyzer will be utilized to confirm capacity. As a contingency, any piles that cannot be driven to their desired depth using the vibratory hammer may require the use of the impact hammer to finish installation. This contingency has been accounted for in the modeling analysis.

The contractor is expected to mobilize two floating barges, one large barge up to 80 ft wide x 300 ft (24 x 91 m) long and one medium sized barge approximately 60 ft wide x 150 ft (18 x 46 m) long, for the test pile program. These barges will be moved into location with a 44 ft (13 m) tug boat. The two barges will share the work load, with the smaller barge working the inboard test piles and the larger barge working the outboard test piles. The smaller barge will likely be on site for approximately two weeks of pile driving while the larger barge will be on site for the full duration of the program which is expected to be no longer than forty days. Only one pile driving rig will be operated at a time.

Sound attenuation measures (*e.g.,* bubble curtain) will be used during all impact hammer operations, and on two of the vibratory-driven piles, to test the practicability of using bubble curtains with a vibratory hammer. The Navy will monitor hydroacoustic levels, as well as the presence and behavior of marine mammals during pile installation and removal. All piles will be removed at or before the completion of the test pile program because they could pose a potential navigation risk if left in place. Removal is also necessary because the test piles will not be incorporated into the proposed EHW–2, as exact pile locations for the future structure have not yet been finalized.

The test pile program will require a maximum of forty work days for completion. A work day is limited to the hours from two hours post-sunrise to two hours prior to sunset. The forty work day duration of the program includes the time for the initial pile installations, time for performing the loading tests, and time to remove all of the test piles. A 108-day authorization window (16 July–31 October) was requested to take into account delays that could occur due to the permitting process, materials availability, and inclement weather that may preclude construction.

The Navy's contractor estimates that pile installation could occur at a maximum rate of four piles per day. However, the Navy anticipates that an average of two piles will be installed and removed per day. For each pile installed, the driving time is expected to include no more than one hour for vibratory driving and fifteen minutes for the impact driving portion of the project, with a maximum 100 blows executed per day. The U.S. Fish and Wildlife Service (USFWS) requested that a maximum of 100 blows be executed per day in order to minimize potential injurious impacts to fish species which the marbled murrelet, listed as threatened under the ESA, prey upon. All piles will be extracted using a vibratory hammer. Extraction is anticipated to take approximately thirty minutes per pile. Overall, this results in an estimated maximum of two hours for driving and removal per pile, or approximately four hours per day. Therefore, while forty days of total in-water work time is proposed, only a fraction of the total work time will actually be spent on pile driving and removal.

An average work day (two hours post-sunrise to two hours prior to sunset) ranges from six to twelve hours (for an average of approximately eight to nine hours), depending on the month. Although it is anticipated that only four hours would need to be spent on pile driving and removal per day, the Navy modeled potential impacts as if the entire day (*i.e.,* eight to nine hours) could be spent pile driving to take into account deviations from the estimated times for pile installation and removal and to account for the additional use of the impact pile driver in case of failure of the vibratory hammer to reach the desired embedment depth. Based on the proposed action, the total pile driving time from vibratory or impact pile driving would be less than fifteen days (29 piles at an average of two per day, assuming an average of eight to nine hours of pile driving per day).

**Description of Noise Sources**

Underwater sound levels are comprised of multiple sources, including physical noise, biological noise, and anthropogenic noise. Physical noise includes waves at the surface, earthquakes, ice, and atmospheric noise. Biological noise includes sounds produced by marine mammals, fish, and invertebrates. Anthropogenic noise consists of vessels (small and large), dredging, aircraft overflights, and construction noise. Known noise levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 1. Details of each of the sources are described in the following text.

TABLE 1—REPRESENTATIVE NOISE LEVELS OF ANTHROPOGENIC SOURCES

| Noise source | Frequency range (Hz) | Underwater noise level (dB re 1 μPa) | Reference |
|---|---|---|---|
| Small vessels | 250–1,000 | 151 dB root mean square (rms) at 1 m | Richardson *et al.* 1995. |
| Tug docking gravel barge | 200–1,000 | 149 dB rms at 100 m (328 ft) | Blackwell and Greene 2002. |
| Vibratory driving of 72-in (1.8 m) steel pipe pile. | 10–1,500 | 180 dB rms at 10 m (33 ft) | CALTRANS 2007. |
| Impact driving of 36-in (0.9 m) steel Pipe pile | 10–1,500 | 195 dB rms at 10 m | WSDOT 2007. |
| Impact driving of 66-in (1.7 m) CISS[1] piles | 100–1,500 | 195 dB rms at 10 m | Reviewed in Hastings and Popper 2005. |

[1] CISS = cast-in-steel-shell.

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving. The sounds produced by these activities fall into one of two sound types: pulsed and non-pulsed (defined in next paragraph). Impact pile driving produces pulsed sounds, while vibratory pile driving produces non-pulsed (or continuous) sounds. The distinction between these two general sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sounds (*e.g.,* explosions, gunshots, sonic booms, seismic pile driving pulses, and impact pile driving) are brief, broadband, atonal transients (ANSI 1986; Harris 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a decay period that may include a period of diminishing, oscillating maximal and minimal pressures. Pulsed sounds generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulse (intermittent or continuous sounds) can be tonal, broadband, or both. Some of these non-pulse sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulse sounds include vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

*Ambient Noise*

By definition, ambient noise is background noise, without a single source or point (Richardson *et al.* 1995). Ambient noise varies with location, season, time of day, and frequency. Ambient noise is continuous, but with much variability on time scales ranging from less than one second to one year (Richardson *et al.* 1995). Ambient underwater noise at the project area is widely variable over time due to a number of natural and anthropogenic sources. Sources of naturally occurring underwater noise include wind, waves, precipitation, and biological noise (*e.g.,* shrimp, fish, cetaceans). There is also human-generated noise from ship or boat traffic and other mechanical means (Urick 1983). Other sources of underwater noise at industrial waterfronts could come from cranes, generators, and other types of mechanized equipment on wharves or the adjacent shoreline.

In the vicinity of the project area, the average broadband ambient underwater noise levels were measured at 114 dB re 1μPa between 100 Hz and 20 kHz (Slater 2009). Peak spectral noise from industrial activity was noted below the 300 Hz frequency, with maximum levels of 110 dB re 1μPa noted in the 125 Hz band. In the 300 Hz to 5 kHz range, average levels ranged between 83–99 dB re 1μPa. Wind-driven wave noise dominated the background noise environment at approximately 5 kHz and above, and ambient noise levels flattened above 10 kHz.

Airborne noise levels at NBKB vary based on location but are estimated to average around 65 dBA (A-weighted decibels) in the residential and office park areas, with traffic noise ranging from 60–80 dBA during daytime hours (Cavanaugh and Tocci 1998). The highest levels of airborne noise are produced along the waterfront and at the ordnance handling areas, where estimated noise levels range from 70–90 dBA and may peak at 99 dBA for short durations. These higher noise levels are produced by a combination of sound sources including heavy trucks, forklifts, cranes, marine vessels, mechanized tools and equipment, and other sound-generating industrial or military activities.

**Sound Thresholds**

Since 1997, NMFS has used generic sound exposure thresholds to determine when an activity in the ocean that produces sound might result in impacts to a marine mammal such that a take by harassment might occur (NMFS 2005b). To date, no studies have been conducted that examine impacts to marine mammals from pile driving sounds from which empirical noise thresholds have been established. Current NMFS practice regarding exposure of marine mammals to high level sounds is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (*i.e.,* injurious) harassment. Behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (*e.g.,* impact pile driving) and 120 dB rms for continuous noise (*e.g.,* vibratory pile driving), but below injurious thresholds. For airborne noise, pinniped disturbance from haul-outs has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals. NMFS uses these levels as guidelines to estimate when harassment may occur.

*Distance to Sound Thresholds*

*Underwater Sound Propagation Formula*—Pile driving would generate underwater noise that potentially could result in disturbance to marine mammals transiting the project area. Transmission loss (TL) underwater is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The formula for transmission loss is:

$TL = B * \log_{10}(R) + C * R$, where

B = logarithmic (predominantly spreading) loss

C = linear (scattering and absorption) loss

R = range from source in meters

For all underwater calculations in this assessment, linear loss (C) was not used (i.e., C = 0) and transmission loss was calculated using only logarithmic spreading. Therefore, using practical spreading (B = 15), the revised formula for transmission loss is TL = 15 $\log_{10}$ (R).

*Underwater Noise from Pile Driving*—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A large quantity of literature regarding sound pressure levels recorded from pile driving projects is available for consideration. In order to determine reasonable sound pressure levels and their associated affects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action were evaluated. Studies which met the following parameters were considered: (1) Pile materials—steel pipe piles (30–72 in [0.8–1.8 m] diameter); (2) Hammer machinery—vibratory and impact; and (3) Physical environment—shallow depth (less than 100 ft [30 m]). Table 2 details representative pile driving activities that have occurred in recent years. Due to the similarity of these actions and the Navy's proposed action, they represent reasonable sound pressure levels which could be anticipated.

TABLE 2—UNDERWATER SOUND PRESSURE LEVELS FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES

| Project & location | Pile size & type | Installation method | Water depth | Measured sound pressure levels |
|---|---|---|---|---|
| Mukilteo Test Piles, WA[1] ..... | 36-in (0.9 m) steel pipe ..... | Impact ..... | 7.3 m (24 ft) ..... | 195 dB re 1 μPa (rms) at 10 m (33 ft). |
| Richmond-San Rafael Bridge, CA[2]. | 66-in (1.7 m) steel CISS pile | Impact ..... | 4 m (13.1 ft) ..... | 195 dB re 1 μPa (rms) at 10 m. |
| Unknown Location, CA[2] ..... | 72-in (1.8 m) steel pipe pile ... | Vibratory ..... | Approximately 5 m (16.4 ft) ... | 180 dB re 1 μPa (rms) at 10 m. |

[1] WSDOT 2007.
[2] CALTRANS 2007.

Several noise reduction measures can be employed during pile driving to reduce the high source pressures associated with impact pile driving. Among these is the use of bubble curtains, cofferdams, pile caps, or the use of vibratory installation. The efficacy of bubble curtains is dependent upon a variety of site-specific factors, including environmental conditions such as water current, sediment type, and bathymetry; the type and size of the pile; and the type and energy of the hammer. For the test pile program, the Navy intends to employ noise reduction techniques during impact pile driving, including the use of the Gunderboom Sound Attenuation System (SAS) or traditional bubble curtain sound attenuation system. Additionally, vibratory pile driving will be the primary installation method, which has lower source levels than impact pile driving. The calculations of the distances to the marine mammal noise thresholds described previously were calculated for impact installation with and without consideration for mitigation measures. Thorson and Reyff (2004) determined that a properly designed bubble curtain could provide a reduction of 5 to 20 dB. Based on information contained therein, distances calculated with consideration for mitigation assumed a 10 dB reduction in source levels from the use of sound attenuation devices, and the Navy used the mitigated distances for impact pile driving for all analysis in their application. Calculations for the marine mammal noise thresholds for vibratory installation were done based on in-situ recordings of vibratory installation and extraction data from CALTRANS (2007) which indicated a sound pressure level (SPL) of 180 db re 1μPa at 10 m (33 ft). This concurred with published literature from other studies which have in the past used a 15 dB reduction factor from source levels from impact driving recordings to calculate source levels for vibratory pile driving. Sound levels associated with vibratory pile removal are the same as those during vibratory installation (CALTRANS 2007) and have been taken into consideration in the modeling analysis. All calculated distances to and the total area encompassed by the marine mammal noise thresholds are provided in Tables 3 and 4, respectively. Calculated distance to thresholds using unmitigated impact driving is provided as reference; no unmitigated impact driving will occur. The USFWS has requested this as a measure to protect prey of the ESA-endangered marbled murrelet.

TABLE 3—CALCULATED DISTANCE(S) TO UNDERWATER MARINE MAMMAL NOISE THRESHOLDS FROM PILE DRIVING

| Description | Distance in meters (ft) to threshold | | | |
|---|---|---|---|---|
| | Impact Level A (190 dB[1]) | Impact Level A (180 dB[1]) | Impact Level B (160 dB[1]) | Vibratory Level B (120 dB[1]) |
| Impact Driving, no mitigation ..... | 22 (72) | 100 (328) | 2,154 (7,067) | N/A |
| Impact Driving with bubble curtain (Mitigation = 10 dB reduction in SPLs) ... | 5 (16) | 22 (72) | 464 (1,522) | N/A |
| Vibratory pile driver ..... | 2 (7) | 10 (33) | N/A | [2] 100,000 (328,084) |

All sound levels expressed in dB re 1 μPa rms.
Practical spreading loss (15 log, or 4.5 dB per doubling of distance) used for water depths 10–50 ft (3–15 m).
[1] Sound pressure levels used for calculations were: 195 dB re 1 μPa @ 10 m (33 ft) for impact and 180 dB re 1 μPa @ 10 m for vibratory.
[2] Range calculated is greater than what would be realistic. Hood Canal average width at site is 2.4 km (1.5 mi), and is fetch limited from N to S at 20.3 km (12.6 mi).

Calculated distances to thresholds, and calculated areas encompassed by thresholds, assume a field free of obstruction. This is unrealistic, however, because the Hood Canal does not represent open water conditions (free field) and therefore, sounds would attenuate as they encountered land masses or bends in the canal. As a result, some of the distances and areas of impact calculated cannot actually be attained within the project area. The actual distances to the behavioral disturbance thresholds for both impact and vibratory pile driving (464 m and 100,000 m [1,522 and 328,084 ft], respectively) may be shorter than those calculated due to the irregular contour of the waterfront, the narrowness of the canal, and the maximum fetch (furthest distance sound waves travel without obstruction [*i.e.,* line of sight]) at the project area. Table 4 presents the calculated area encompassed for each threshold, as well as the actual area that is predicted to be encompassed due to obstructions as described above. Please see figures 6–1 and 6–2 in the Navy's application for graphical depictions of these areas for cetaceans and pinnipeds.

TABLE 4—AREA ENCOMPASSED (PER PILE) BY THE UNDERWATER MARINE MAMMAL NOISE THRESHOLDS FROM PILE DRIVING, CALCULATED AND ACTUAL

| Description | Area in square kilometers ($mi^2$) encompassed by the threshold | | | |
|---|---|---|---|---|
| | Impact Level A (190 dB [1]) | Impact Level A (180 dB [1]) | Impact Level B (160 dB [1]) | Vibratory Level B (120 dB [1]) |
| Impact Driving with bubble curtain, calculated (Mitigation = 10 dB reduction in SPLs) | 0.000 | 0.002 (0.001) | 0.676 (0.261) | N/A |
| Impact Driving with bubble curtain, actual (Mitigation = 10 dB reduction in SPLs) | 0.000 | 0.002 (0.001) | 0.509 (0.197) | N/A |
| Vibratory pile driver, calculated | 0.000 | 0.000 | N/A | 31,416 (12,130) |
| Vibratory pile driver, actual | 0.000 | 0.000 | N/A | 41.5 (16) |

[1] Sound pressure levels used for calculations were: 195 dB re 1 μPa @ 10 m (33 ft) for impact and 180 dB re 1 μPa @ 10 m for vibratory.

*Airborne Sound Propagation Formula*—Pile driving can generate airborne noise that could potentially result in disturbance to marine mammals (specifically, pinnipeds) which are hauled out or at the water's surface. As a result, the Navy analyzed the potential for pinnipeds hauled out or swimming at the surface near NBKB to be exposed to airborne sound pressure levels that could result in Level B behavioral harassment. The appropriate airborne noise threshold for behavioral disturbance for all pinnipeds, except harbor seals, is 100 dB re 20 μPa rms (unweighted). For harbor seals the threshold is 90 dB re 20 μPa rms (unweighted). A spherical spreading loss model, assuming average atmospheric conditions, was used to estimate the distance to the 100 dB and 90 dB re 20 μPa rms (unweighted) airborne thresholds. The formula for calculating spherical spreading loss is:

TL = 20log r

TL = Transmission loss

r = Distance from source to receiver

*Spherical spreading results in a 6 dB decrease in sound pressure level per doubling of distance.

*Airborne Sound from Pile Driving*—As was discussed for underwater noise from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to determine reasonable airborne sound pressure levels and their associated effects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action, as described previously, were evaluated. Table 5 details representative pile driving activities that have occurred in recent years. Due to the similarity of these actions and the Navy's proposed action, they represent reasonable sound pressure levels which could be anticipated.

TABLE 5—AIRBORNE SOUND PRESSURE LEVELS FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES

| Project & location | Pile size & type | Installation method | Water depth | Measured sound pressure levels |
|---|---|---|---|---|
| Northstar Island, AK [1] | 42-in (1.1 m) steel pipe pile. | Impact | Approximately 12 m (40 ft). | 97 dB re 20 μPa (rms) at 525 ft (160 m). |
| Keystone Ferry Terminal, WA [2] | 30-in (0.8 m) steel pipe pile | Vibratory | Approximately 9 m (30 ft). | 98 dB re 20 μPa (rms) at 36 ft (11 m). |

[1] Blackwell *et al.* 2004.

[2] WSDOT 2010.

Based on in-situ recordings from similar construction activities, the maximum airborne noise levels that would result from impact and vibratory pile driving are estimated to be 97 dB re 20 μPa (rms) at 525 ft (160 m) and 98 dB re 20 μPa (rms) at 36 ft (11 m), respectively (Blackwell *et al.* 2004; WSDOT 2010). The distances to the airborne thresholds were calculated with the airborne transmission loss formula presented previously. All calculated distances to and the total area encompassed by the airborne marine mammal noise thresholds are provided in Tables 6 and 7, respectively.

TABLE 6—CALCULATED DISTANCES TO THE MARINE MAMMAL NOISE THRESHOLDS IN-AIR FROM PILE DRIVING

| Species | Threshold | Airborne behavioral disturbance | |
|---|---|---|---|
| | | Distance to threshold impact pile driving | Distance to threshold vibratory pile driving |
| Pinnipeds (except harbor seal) | 100 dB re 20 μPa rms (unweighted) | 113 m (371 ft) | 9 m (30 ft). |
| Harbor seal | 90 dB re 20 μPa rms (unweighted) | 358 m (1,175 ft) | 28 m (92 ft). |

TABLE 7—CALCULATED AREA ENCOMPASSED (PER PILE) BY THE MARINE MAMMAL NOISE THRESHOLDS IN-AIR FROM PILE DRIVING

| Species | Threshold | Airborne behavioral disturbance | |
|---|---|---|---|
| | | Area encompassed by the threshold for impact pile driving | Area encompassed by the threshold for vibratory pile driving |
| Pinnipeds (except harbor seal) | 100 dB re 20 μPa rms (unweighted) | 0.040 $km^2$ (.015 $mi^2$) | 0.000 $km^2$. |
| Harbor seal | 90 dB re 20 μPa rms (unweighted) | 0.403 $km^2$ (0.156 $mi^2$) | 0.002 $km^2$ (.001 $mi^2$). |

The distance to the sea lion airborne threshold would be 113 m (371 ft) for impact pile driving, and 9 m (30 ft) for vibratory pile driving. The distance to the harbor seal airborne threshold would be 358 m (1,175 ft) for impact pile driving, and 28 m (92 ft) for vibratory pile driving. These distances are all less than the distances calculated for underwater sound thresholds. Since protective measures are in place out to the distances calculated for the underwater thresholds, the distances for the airborne thresholds will be covered fully by mitigation and monitoring measures in place for underwater sound thresholds. All construction noise associated with the project would not extend beyond the buffer zone for underwater sound that would be established to protect seals and sea lions. No haul-outs or rookeries are located within these radii. Please see figures 6–3 and 6–4 of the Navy's application for graphical depictions of the distances and total area encompassed by each airborne sound threshold for pinnipeds that are predicted to occur at the project area due to pile driving.

**Description of Marine Mammals in the Area of the Specified Activity**

There are six marine mammal species, three cetaceans and three pinnipeds, which may inhabit or transit through the waters nearby NBKB in the Hood Canal. These include the transient killer whale, harbor porpoise, Dall's porpoise, Steller sea lion, California sea lion, and the harbor seal. While the Southern Resident killer whale is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in decades, and therefore was excluded from further analysis. The Steller sea lion is the only marine mammal that occurs within the Hood Canal which is listed under the ESA; the Eastern DPS is listed as threatened. As noted previously, and in Table 8, Steller sea lions are not present in the project area during the proposed project timeframe (July 16–October 31). Steller sea lions will not be discussed in detail. All marine mammal species are protected under the MMPA. This section summarizes the population status and abundance of these species, followed by detailed life history information. Table 8 lists the marine mammal species that occur in the vicinity of NBKB and their estimated densities within the project area during the proposed timeframe.

TABLE 8—MARINE MAMMALS PRESENT IN THE HOOD CANAL IN THE VICINITY OF NBKB

| Species | Stock abundance [1] | Relative occurrence in Hood Canal | Season of occurrence | Density in warm season [3] (individuals/$km^2$) |
|---|---|---|---|---|
| Steller sea lion; Eastern U.S. DPS | [2] 50,464 | Rare to occasional use | Fall to late spring (Nov–mid April) | N/A |
| California sea lion; U.S. Stock | 238,000 | Common | Fall to late spring (Aug–May) | [4] 0.410 |
| Harbor seal; WA inland waters stock. | 14,612 (CV = 0.15) | Common | Year-round; resident species in Hood Canal. | [5] 1.31 |
| Killer whale; West Coast transient stock. | 314 | Rare to occasional use | Year-round | [6] 0.038 |
| Dall's porpoise; CA/OR/WA stock | 48,376 (CV = 0.24) | Rare to occasional use | Year-round | [7] 0.043 |
| Harbor porpoise; WA inland waters stock. | 10,682 (CV = 0.38) | Rare to occasional use | Year-round | [7] 0.011 |

[1] NMFS marine mammal stock assessment reports at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.*
[2] Average of a given range.
[3] Warm season refers to the period from May–Oct.
[4] DoN 2010a.
[5] Jeffries *et al.* 2003; Huber *et al.* 2001.
[6] London 2006.
[7] Agness and Tannenbaum 2009a.

*California Sea Lion*

*Species Description*—California sea lions are members of the Otariid family (eared seals). The species, *Zalophus californianus,* includes three subspecies: *Z. c. wollebaeki* (in the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and *Z. c. californianus* (found from southern Mexico to southwestern Canada; referred to here as the California sea lion) (Carretta *et al.* 2007). The California sea lion is sexually dimorphic. Males may reach 1,000 lb (454 kg) and 8 ft (2.4 m) in length; females grow to 300 lb (136 kg) and 6 ft (1.8 m) in length. Their color ranges from chocolate brown in males to a lighter, golden brown in females. At around five years of age, males develop a bony bump on top of the skull called a sagittal crest. The crest is visible in the dog-like profile of male sea lion heads, and hair around the crest gets lighter with age.

*Population Abundance*—The U.S. stock of California sea lions may occur in the marine waters nearby NBKB. The stock is estimated at 238,000 and the minimum population size of this stock is 141,842 individuals (Carretta *et al.* 2007). These numbers are from counts during the 2001 breeding season of animals that were ashore at the four major rookeries in southern California and at haul-out sites north to the Oregon/California border. Sea lions that were at-sea or hauled-out at other locations were not counted (Carretta *et al.* 2007). An estimated 3,000 to 5,000 California sea lions migrate to waters of Washington and British Columbia during the non-breeding season from September to May (Jeffries *et al.* 2000). Peak numbers of up to 1,000 California sea lions occur in Puget Sound (including Hood Canal) during this time period (Jeffries *et al.* 2000).

*Distribution*—The geographic distribution of California sea lions includes a breeding range from Baja California, Mexico to southern California. During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and seldom travel more than about 31 mi (50 km) from the islands (Bonnell *et al.* 1983). The primary rookeries are located on the California Channel Islands of San Miguel, San Nicolas, Santa Barbara, and San Clemente (Le Boeuf and Bonnell 1980; Bonnell and Dailey 1993). Their distribution shifts to the northwest in fall and to the southeast during winter and spring, probably in response to changes in prey availability (Bonnell and Ford 1987).

The non-breeding distribution extends from Baja California north to Alaska for males, and encompasses the waters of California and Baja California for females (Reeves *et al.* 2008; Maniscalco *et al.* 2004). In the non-breeding season, an estimated 3,000–5,000 adult and sub-adult males migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island from September to May (Jeffries *et al.* 2000) and return south the following spring (Mate 1975; Bonnell *et al.* 1983). Along their migration, they are occasionally sighted hundreds of miles offshore (Jefferson *et al.* 1993). Females and juveniles tend to stay closer to the rookeries (Bonnell *et al* 1983).

Peak abundance in the Puget Sound is September to May. Although there are no regular California sea lion haul-outs within the Hood Canal (Jeffries *et al.* 2000), they often haul out at several opportune areas. They are known to utilize man-made structures such as piers, jetties, offshore buoys, and oil platforms (Riedman 1990). California sea lions in the Puget Sound sometimes haul out on log booms and Navy submarines, and are often seen rafted off river mouths (Jeffries *et al.* 2000; DoN 2001). As many as forty California sea lions have been observed hauled out at NBKB on manmade structures (*e.g.,* submarines, floating security fence, barges) (Agness and Tannenbaum 2009a; Tannenbaum *et al.* 2009a; Walters 2009). California sea lions have also been observed swimming in the Hood Canal in the vicinity of the project area on several occasions and likely forage in both nearshore marine and inland marine deeper waters (DoN 2001a).

*Behavior and Ecology*—California sea lions feed on a wide variety of prey, including many species of fish and squid (Everitt *et al.* 1981; Roffe and Mate 1984; Antonelis *et al.* 1990; Lowry *et al.* 1991). In the Puget Sound region, they feed primarily on fish such as Pacific hake (*Merluccius productus*), walleye pollock (*Theragra chalcogramma*), Pacific herring (*Clupea pallasii*), and spiny dogfish (*Squalus acanthias*) (Calambokidis and Baird 1994). In some locations where salmon runs exist, California sea lions also feed on returning adult and out-migrating juvenile salmonids (London 2006). Sexual maturity occurs at around four to five years of age for California sea lions (Heath 2002). California sea lions are gregarious during the breeding season and social on land during other times.

*Acoustics*—On land, California sea lions make incessant, raucous barking sounds; these have most of their energy at less than 2 kHz (Schusterman *et al.* 1967). Males vary both the number and rhythm of their barks depending on the social context; the barks appear to control the movements and other behavior patterns of nearby conspecifics (Schusterman 1977). Females produce barks, squeals, belches, and growls in the frequency range of 0.25–5 kHz, while pups make bleating sounds at 0.25–6 kHz. California sea lions produce two types of underwater sounds: clicks (or short-duration sound pulses) and barks (Schusterman *et al.* 1966, 1967; Schusterman and Baillet 1969). All underwater sounds have most of their energy below 4 kHz (Schusterman *et al.* 1967).

The range of maximal hearing sensitivity underwater is between 1–28 kHz (Schusterman *et al.* 1972). Functional underwater high frequency hearing limits are between 35–40 kHz, with peak sensitivities from 15–30 kHz (Schusterman *et al.* 1972). The California sea lion shows relatively poor hearing at frequencies below 1 kHz (Kastak and Schusterman 1998). Peak hearing sensitivities in air are shifted to lower frequencies; the effective upper hearing limit is approximately 36 kHz (Schusterman 1974). The best range of sound detection is from 2–16 kHz (Schusterman 1974). Kastak and Schusterman (2002) determined that hearing sensitivity generally worsens with depth—hearing thresholds were lower in shallow water, except at the highest frequency tested (35 kHz), where this trend was reversed. Octave band noise levels of 65–70 dB above the animal's threshold produced an average temporary threshold shift (TTS; discussed later in "Potential Effects of the Specified Activity on Marine Mammals") of 4.9 dB in the California sea lion (Kastak *et al.* 1999).

*Harbor Seal*

*Species Description*—Harbor seals, which are members of the Phocid family (true seals), inhabit coastal and estuarine waters and shoreline areas from Baja California, Mexico to western Alaska. For management purposes, differences in mean pupping date (*i.e.,* birthing) (Temte 1986), movement patterns (Jeffries 1985; Brown 1988), pollutant loads (Calambokidis *et al.* 1985) and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng 1988). The three distinct stocks are: (1) inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.* 2007).

The inland waters of Washington stock is the only stock that is expected to occur within the project area.

The average weight for adult seals is about 180 lb (82 kg) and males are slightly larger than females. Male harbor seals weigh up to 245 lb (111 kg) and measure approximately 5 ft (1.5 m) in length. The basic color of harbor seals' coat is gray and mottled but highly variable, from dark with light color rings or spots to light with dark markings (NMFS 2008c).

*Population Abundance*—Estimated population numbers for the inland waters of Washington, including the Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery, are 14,612 individuals (Carretta *et al.* 2007). The minimum population is 12,844 individuals. The harbor seal is the only species of marine mammal that is consistently abundant and considered resident in the Hood Canal (Jeffries *et al.* 2003). The population of harbor seals in Hood Canal is a closed population, meaning that they do not have much movement outside of Hood Canal (London 2006). The abundance of harbor seals in Hood canal has stabilized, and the population may have reached its carrying capacity in the mid-1990s with an approximate abundance of 1,000 harbor seals (Jeffries *et al.* 2003).

*Distribution*—Harbor seals are coastal species, rarely found more than 12 mi (20 km) from shore, and frequently occupy bays, estuaries, and inlets (Baird 2001). Individual seals have been observed several miles upstream in coastal rivers. Ideal harbor seal habitat includes haul-out sites, shelter during the breeding periods, and sufficient food (Bjorge 2002). Haul-out areas can include intertidal and subtidal rock outcrops, sandbars, sandy beaches, peat banks in salt marshes, and man-made structures such as log booms, docks, and recreational floats (Wilson 1978; Prescott 1982; Schneider and Payne 1983; Gilber and Guldager 1998; Jeffries *et al.* 2000). Human disturbance can affect haul-out choice (Harris *et al.* 2003).

Harbor seals occur throughout Hood Canal and are seen relatively commonly in the area. They are year-round, non-migratory residents, and pup (*i.e.,* give birth) in Hood Canal. Surveys in the Hood Canal from the mid-1970s to 2000 show a fairly stable population between 600–1,200 seals (Jeffries *et al.* 2003). Harbor seals have been observed swimming in the waters along NBKB in every month of surveys conducted from 2007–2010 (Agness and Tannenbaum 2009b; Tannenbaum *et al.* 2009b). On the NBKB waterfront, harbor seals have not been observed hauling out in the intertidal zone, but have been observed hauled-out on man-made structures such as the floating security fence, buoys, barges, marine vessels, and logs (Agness and Tannenbaum 2009a; Tannenbaum *et al.* 2009a). The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas at Quilcene, Dosewallips, Duckabush, Hamma Hamma, and Skokomish River mouths (see Figure 4–1 of the Navy's application), with the closest haul-out area to the project area being ten miles (16 km) southwest of NBKB at Dosewallips River mouth (London 2006).

*Behavior and Ecology*—Harbor seals are typically seen in small groups resting on tidal reefs, boulders, mudflats, man-made structures, and sandbars. Harbor seals are opportunistic feeders that adjust their patterns to take advantage of locally and seasonally abundant prey (Payne and Selzer 1989; Baird 2001; Bjørge 2002). The harbor seal diet consists of fish and invertebrates (Bigg 1981; Roffe and Mate 1984; Orr *et al.* 2004). Although harbor seals in the Pacific Northwest are common in inshore and estuarine waters, they primarily feed at sea (Orr *et al.* 2004) during high tide. Researchers have found that they complete both shallow and deep dives during hunting depending on the availability of prey (Tollit *et al.* 1997). Their diet in Puget Sound consists of many of the prey resources that are present in the nearshore and deeper waters of NBKB, including hake, herring and adult and out-migrating juvenile salmonids. Harbor seals in Hood Canal are known to feed on returning adult salmon, including ESA-threatened summer-run chum (*Oncorhynchus keta*). Over a five-year study of harbor seal predation in the Hood Canal, the average percent escapement of summer-run chum consumed was eight percent (London 2006).

Harbor seals mate at sea and females give birth during the spring and summer, although the pupping season varies by latitude. In coastal and inland regions of Washington, pups are born from April through January. Pups are generally born earlier in the coastal areas and later in the Puget Sound/Hood Canal region (Calambokidis and Jeffries 1991; Jeffries *et al.* 2000). Suckling harbor seal pups spend as much as forty percent of their time in the water (Bowen *et al.* 1999).

*Acoustics*—In air, harbor seal males produce a variety of low-frequency (less than 4 kHz) vocalizations, including snorts, grunts, and growls. Male harbor seals produce communication sounds in the frequency range of 100–1,000 Hz (Richardson *et al.* 1995). Pups make individually unique calls for mother recognition that contain multiple harmonics with main energy below 0.35 kHz (Bigg 1981; Thomson and Richardson 1995). Harbor seals hear nearly as well in air as underwater and had lower thresholds than California sea lions (Kastak and Schusterman 1998). Kastak and Schusterman (1998) reported airborne low frequency (100 Hz) sound detection thresholds at 65.4 dB re 20 µPa for harbor seals. In air, they hear frequencies from 0.25–30 kHz and are most sensitive from 6–16 kHz (Richardson 1995; Terhune and Turnbull 1995; Wolski *et al.* 2003).

Adult males also produce underwater sounds during the breeding season that typically range from 0.25–4 kHz (duration range: 0.1 s to multiple seconds; Hanggi and Schusterman 1994). Hanggi and Schusteman (1994) found that there is individual variation in the dominant frequency range of sounds between different males, and Van Parijs *et al.* (2003) reported oceanic, regional, population, and site-specific variation that could be vocal dialects. In water, they hear frequencies from 1–75 kHz (Southall *et al.* 2007) and can detect sound levels as weak as 60–85 dB re 1 µPa within that band. They are most sensitive at frequencies below 50 kHz; above 60 kHz sensitivity rapidly decreases.

*Killer Whale*

*Species Description*—Killer whales are members of the Delphinid family and are the most widely distributed cetacean species in the world. Killer whales have a distinctive color pattern, with black dorsal and white ventral portions. They also have a conspicuous white patch above and behind the eye and a highly variable gray or white saddle area behind the dorsal fin. The species shows considerable sexual dimorphism. Adult males develop larger pectoral flippers, dorsal fins, tail flukes, and girths than females. Male adult killer whales can reach up to 32 ft (9.8 m) in length and weigh nearly 22,000 lb (10,000 kg); females reach 28 ft (8.5 m) in length and weigh up to 16,500 lb (7,500 kg).

Based on appearance, feeding habits, vocalizations, social structure, and distribution and movement patterns there are three types of populations of killer whales (Wiles 2004; NMFS 2005). The three distinct forms or types of killer whales recognized in the North Pacific Ocean are: (1) Resident, (2) Transient, and (3) Offshore. The resident and transient populations have

been divided further into different subpopulations based mainly on genetic analyses and distribution; not enough is known about the offshore whales to divide them into subpopulations (Wiles 2004). Only transient killer whales are known from the project area.

Transient killer whales occur throughout the eastern North Pacific, and have primarily been studied in coastal waters. Their geographical range overlaps that of the resident and offshore killer whales. The dorsal fin of transient whales tends to be more erect (straighter at the tip) than those of resident and offshore whales (Ford and Ellis 1999; Ford *et al.* 2000). Saddle patch pigmentation of transient killer whales is restricted to two patterns, and never has the large areas of black pigmentation intruding into the white of the saddle patch that is seen in resident and offshore types. Transient type whales are often found in long-term stable social units that tend to be smaller than resident social groups (e.g., fewer than ten whales); these social units do not seem as permanent as matrilines are in resident type whales. Transient killer whales feed nearly exclusively on marine mammals (Ford and Ellis 1999), whereas resident whales primarily eat fish. Offshore whales are presumed to feed primarily on fish, and have been documented feeding on sharks.

Within the transient type, association data (Ford *et al.* 1994; Ford and Ellis 1999; Matkin *et al.* 1999), acoustic data (Saulitis 1993; Ford and Ellis 1999) and genetic data (Hoelzel *et al.* 1998, 2002; Barrett-Lennard 2000) confirms that three communities of transient whales exist and represent three discrete populations: (1) Gulf of Alaska, Aleutian Islands, and Bering Sea transients, (2) AT1 transients (Prince William Sound, AK; listed as depleted under the MMPA), and (3) West Coast transients. Among the genetically distinct assemblages of transient killer whales in the northeastern Pacific, only the West Coast transient stock, which occurs from southern California to southeastern Alaska, may occur in the project area.

*Population Abundance*—The West Coast transient stock is a trans-boundary stock, with minimum counts for the population of transient killer whales coming from various photographic datasets. Combining these counts of cataloged transient whales gives a minimum number of 314 individuals for the West Coast transient stock (Allen and Angliss 2010). However, the number in Washington waters at any one time is probably fewer than twenty individuals (Wiles 2004).

*Distribution*—The geographical range of transient killer whales includes the northeast Pacific, with preference for coastal waters of southern Alaska and British Columbia (Krahn *et al.* 2002). Transient killer whales in the eastern North Pacific spend most of their time along the outer coast, but visit Hood Canal and the Puget Sound in search of harbor seals, sea lions, and other prey. Transient occurrence in inland waters appears to peak during August and September (Morton 1990; Baird and Dill 1995; Ford and Ellis 1999) which is the peak time for harbor seal pupping, weaning, and post-weaning (Baird and Dill 1995). In 2003 and 2005, small groups of transient killer whales (eleven and six individuals, respectively) visited Hood Canal to feed on harbor seals and remained in the area for significant periods of time (59 and 172 days, respectively) between the months of January and July.

*Behavior and Ecology*—Transient killer whales show greater variability in habitat use, with some groups spending most of their time foraging in shallow waters close to shore while others hunt almost entirely in open water (Felleman *et al.* 1991; Baird and Dill 1995; Matkin and Saulitis 1997). Transient killer whales feed on marine mammals and some seabirds, but apparently no fish (Morton 1990; Baird and Dill 1996; Ford *et al.* 1998; Ford and Ellis 1999; Ford *et al.* 2005). While present in Hood Canal in 2003 and 2005, transient killer whales preyed on harbor seals in the subtidal zone of the nearshore marine and inland marine deeper water habitats (London 2006). Other observations of foraging transient killer whales indicate they prefer to forage on pinnipeds in shallow, protected waters (Heimlich-Boran 1988; Saulitis *et al.* 2000). Transient killer whales travel in small, matrilineal groups, but they typically contain fewer than ten animals and their social organization generally is more flexible than that of resident killer whales (Morton 1990, Ford and Ellis 1999). These differences in social organization probably relate to differences in foraging (Baird and Whitehead 2000). There is no information on the reproductive behavior of killer whales in this area.

*Acoustics*—Killer whales produces a wide variety of clicks and whistles, but most of their sounds are pulsed, with frequencies ranging from 0.5–25 kHz (dominant frequency range: 1–6 kHz) (Thomson and Richardson 1995; Richardson *et al.* 1995). Source levels of echolocation signals range between 195–224 dB re 1 μPa-m peak-to-peak (p-p), dominant frequencies range from 20–60 kHz, with durations of about 0.1 s (Au *et al.* 2004). Source levels associated with social sounds have been calculated to range between 131–168 dB re 1 μPa-m and vary with vocalization type (Veirs 2004).

Both behavioral and auditory brainstem response technique indicate killer whales can hear in a frequency range of 1–100 kHz and are most sensitive at 20 kHz. This is one of the lowest maximum-sensitivity frequencies known among toothed whales (Szymanski *et al.* 1999).

*Dall's Porpoise*

*Species Description*—Dall's porpoises are members of the Phocoenid (porpoise) family and are common in the North Pacific Ocean. They can reach a maximum length of just under 8 ft (2.4 m) and weigh up to 480 lb (218 kg). Males are slightly larger and thicker than females, which reach lengths of just under 7 ft (2.1 m) long. The body of Dall's porpoises is a very dark gray or black in coloration with variable contrasting white thoracic panels and white 'frosting' on the dorsal fin and tail that distinguish them from other cetacean species. These markings and colorations vary with geographic region and life stage, with adults having more distinct patterns.

Based on NMFS stock assessment reports, Dall's porpoises within the Pacific U.S. Exclusive Economic Zone are divided into two discrete, noncontiguous areas: (1) waters off California, Oregon, and Washington, and (2) Alaskan waters (Carretta *et al.* 2008). Only individuals from the CA/OR/WA stock may occur within the project area.

*Population Abundance*—The NMFS population estimate, recently updated in 2008 for the CA/OR/WA stock, is 48,376 (CV = 0.24) which is based on vessel line transect surveys by Barlow and Forney (2007) and Forney (2007) (Carretta *et al.* 2008). The minimum population is considered to be 39,709. Additional numbers of Dall's porpoises occur in the inland waters of Washington, but the most recent estimate was obtained in 1996 (900 animals; CV = 0.40; Calambokidis *et al.* 1997) and is not included in the overall estimate of abundance for this stock due to the need for more up-to-date information.

*Distribution*—The Dall's porpoise is found from northern Baja California, Mexico, north to the northern Bering Sea and south to southern Japan (Jefferson *et al.* 1993). The species is only common between 32–62°N in the eastern North Pacific (Morejohn 1979; Houck and Jefferson 1999). North-south movements in California, Oregon, and

Washington have been suggested. Dall's porpoises shift their distribution southward during cooler-water periods (Forney and Barlow 1998). Norris and Prescott (1961) reported finding Dall's porpoises in southern California waters only in the winter, generally when the water temperature was less than 15°C (59°F). Seasonal movements have also been noted off Oregon and Washington, where higher densities of Dall's porpoises were sighted offshore in winter and spring and inshore in summer and fall (Green *et al.* 1992).

In Washington, they are most abundant in offshore waters. They are year-round residents in Washington (Green *et al.* 1992), but their distribution is highly variable between years, likely due to changes in oceanographic conditions (Forney and Barlow 1998). Dall's porpoises are observed throughout the year in the Puget Sound north of Seattle (Osborne *et al.* 1998) and are seen occasionally in southern Puget Sound. Dall's porpoises may also occasionally occur in Hood Canal (Jeffries 2006, personal communication). Nearshore habitats used by Dall's porpoises could include the marine habitats found in the inland marine waters of the Hood Canal. A Dall's porpoise was observed in the deeper water at NBKB in summer 2008 (Tannenbaum *et al.* 2009a).

*Behavior and Ecology*—Dall's porpoises can be opportunistic feeders but primarily consume schooling forage fish. They are known to eat squid, crustaceans, and fishes such as blackbelly eelpout (*Lycodopsis pacifica*), herring, pollock, hake, and Pacific sandlance (*Ammodytes hexapterus*) (Walker *et al.* 1998). Groups of Dall's porpoises generally include fewer than ten individuals and are fluid, probably aggregating for feeding (Jefferson 1990, 1991; Houck and Jefferson 1999). Dall's porpoises become sexually mature at three and a half to eight years of age (Houck and Jefferson 1999) and give birth to a single calf after ten to twelve months. Breeding and calving typically occurs in the spring and summer (Angell and Balcomb 1982). In the North Pacific, there is a strong summer calving peak from early June through August (Ferrero and Walker 1999), and a smaller peak in March (Jefferson 1989). Resident Dall's porpoises breed in Puget Sound from August to September.

*Acoustics*—Only short duration pulsed sounds have been recorded for Dall's porpoises (Houck and Jefferson 1999); this species apparently does not whistle often (Richardson *et al.* 1995). Dall's porpoises produce short duration (50–1,500 µs), high-frequency, narrow band clicks, with peak energies between 120–160 kHz (Jefferson 1988). There is no published data on the hearing abilities of this species.

*Harbor Porpoise*

*Species Description*—Harbor porpoises belong to the Phocoenid (porpoise) family and are found extensively along the Pacific U.S. coast. Harbor porpoises are small, with males reaching average lengths of approximately 5 ft (1.5 m); Females are slightly larger with an average length of 5.5 ft (1.7 m). The average adult harbor porpoise weighs between 135–170 lb (61–77 kg). Harbor porpoises have a dark grey coloration on their backs, with their belly and throats white. They have a dark grey chin patch and intermediate shades of grey along their sides.

Recent preliminary genetic analyses of samples ranging from Monterey, CA to Vancouver Island, BC indicate that there is small-scale subdivision within the U.S. portion of this range (Chivers *et al.* 2002). Although geographic structure exists along an almost continuous distribution of harbor porpoises from California to Alaska, stock boundaries are difficult to draw because any rigid line is generally arbitrary from a biological perspective. Nevertheless, based on genetic data and density discontinuities identified from aerial surveys, NMFS identifies eight stocks in the Northeast Pacific Ocean. Pacific coast harbor porpoise stocks include: (1) Monterey Bay, (2) San Francisco-Russian River, (3) northern California/southern Oregon, (4) Oregon/Washington coastal, (5) inland Washington, (6) Southeast Alaska, (7) Gulf of Alaska, and (8) Bering Sea. Only individuals from the Washington Inland Waters stock may occur in the project area.

*Population Abundance*—Aerial surveys of the inland waters of Washington and southern British Columbia were conducted during August of 2002 and 2003 (J. Laake, unpubl. data). These aerial surveys included the Strait of Juan de Fuca, San Juan Islands, Gulf Islands, and Strait of Georgia, which includes waters inhabited by the Washington Inland Waters stock of harbor porpoises as well as harbor porpoises from British Columbia. An average of the 2002 and 2003 estimates of abundance in U.S. waters resulted in an uncorrected abundance of 3,123 (CV= 0.10) harbor porpoises in Washington inland waters (J. Laake, unpubl. data). When corrected for availability and perception bias, the estimated abundance for the Washington Inland Waters stock of harbor porpoise is 10,682 (CV = 0.38) animals (Carretta *et al.* 2008). The minimum population estimate is 7,841.

*Distribution*—Harbor porpoises are generally found in cool temperate to subarctic waters over the continental shelf in both the North Atlantic and North Pacific (Read 1999). This species is seldom found in waters warmer than 17°C (63°F; Read 1999) or south of Point Conception (Hubbs 1960; Barlow and Hanan 1995). Harbor porpoises can be found year-round primarily in the shallow coastal waters of harbors, bays, and river mouths (Green *et al.* 1992). Along the Pacific coast, harbor porpoises occur from Monterey Bay, California to the Aleutian Islands and west to Japan (Reeves *et al.* 2002). Harbor porpoises are known to occur in Puget Sound year round (Osmek *et al.* 1996, 1998; Carretta *et al.* 2007), and may occasionally occur in Hood Canal (Jeffries 2006, pers. comm.). Harbor porpoise observations in northern Hood Canal have increased in recent years (Calambokidis 2010, pers. comm.). A harbor porpoise was seen in deeper water at NBKB during 2010 field observations (SAIC 2010, staff obs.).

*Behavior and Ecology*—Harbor porpoises are non-social animals usually seen in small groups of two to five animals. Little is known about their social behavior. Harbor porpoises can be opportunistic foragers but primarily consume schooling forage fish (Osmek *et al.* 1996; Bowen and Siniff 1999; Reeves *et al.* 2002). Along the coast of Washington, harbor porpoises primarily feed on herring, market squid (*Loligo opalescens*) and eulachon (*Thaleichthys pacificus*) (Gearin *et al.* 1994). Females reach sexual maturity at three to four years of age and may give birth every year for several years in a row. Calves are born in late spring (Read 1990; Read and Hohn 1995). Dall's and harbor porpoises appear to hybridize relatively frequently in the Puget Sound area (Willis *et al.* 2004).

*Acoustics*—Harbor porpoise vocalizations include clicks and pulses (Ketten 1998), as well as whistle-like signals (Verboom and Kastelein 1995). The dominant frequency range is 110–150 kHz, with source levels of 135–177 dB re 1 µPa-m (Ketten 1998). Echolocation signals include one or two low-frequency components in the 1.4–2.5 kHz range (Verboom and Kastelein 1995).

A behavioral audiogram of a harbor porpoise indicated the range of best sensitivity is 8–32 kHz at levels between 45–50 dB re 1 µPa-m (Andersen 1970); however, auditory-evoked potential studies showed a much higher frequency of approximately 125–130 kHz (Bibikov 1992). The auditory-

evoked potential method suggests that the harbor porpoise actually has two frequency ranges of best sensitivity. More recent psycho-acoustic studies found the range of best hearing to be 16–140 kHz, with a reduced sensitivity around 64 kHz (Kastelein *et al.* 2002). Maximum sensitivity occurs between 100–140 kHz (Kastelein *et al.* 2002).

**Potential Effects of the Specified Activity on Marine Mammals**

NMFS has determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, harbor seals, harbor porpoises, Dall's porpoises, and killer whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

*Marine Mammal Hearing*

The primary effect on marine mammals anticipated from the specified activities will result from exposure of animals to underwater sound. Exposure to sound can affect marine mammal hearing. When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate functional hearing groups for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (thirteen species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and nineteen species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (six species of true porpoises, four species of river dolphins, two members of the genus *Kogia,* and four dolphin species of the genus *Cephalorhynchus*): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, two pinnipeds and three cetacean species are likely to occur in the proposed project area. Of the three cetacean species likely to occur in the project area, two are classified as high frequency cetaceans (Dall's and harbor porpoises) and one is classified as a mid-frequency cetacean (killer whales) (Southall *et al.* 2007).

*Underwater Noise Effects*

*Potential Effects of Pile Driving Noise*—The effects of sounds from pile driving might result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.* 1995; Gordon *et al.* 2004; Nowacek *et al.* 2007; Southall *et al.* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (e.g., sand) will absorb or attenuate the sound more readily than hard substrates (e.g., rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity, ranging from effects such as behavioral disturbance, tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to mortality (Yelverton *et al.* 1973; O'Keefe and Young 1984; DoN 2001b).

*Hearing Impairment and Other Physical Effects*

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction, either permanently or temporarily. However, this depends on both the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated noise exposure that leads to TTS could cause PTS. PTS, in the unlikely event that it occurred, would constitute injury, but TTS is not considered injury (Southall *et al.* 2007). It is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment or any significant non-auditory physical or physiological effects for reasons discussed later in this document. Some behavioral disturbance is expected, but it is likely that this would be localized and short-term because of the short project duration.

Several aspects of the planned monitoring and mitigation measures for this project (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some

avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment. Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure for any given individual and the planned monitoring and mitigation measures. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

*Temporary Threshold Shift*—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa²-s (i.e., 186 dB sound exposure level [SEL] or approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB re 1 μPa rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Levels greater than or equal to 190 dB re 1 μPa rms are expected to be restricted to radii no more than 5 m (16 ft) from the pile driving. For an odontocete closer to the surface, the maximum radius with greater than or equal to 190 dB re 1 μPa rms would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.* 2009). To avoid the potential for injury, NMFS has determined that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa rms. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

*Permanent Threshold Shift*—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to pile driving activity might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to pile driving might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa²-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

*Non-auditory Physiological Effects*—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.* 2006; Southall *et al.* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa at 1 m (3.3 ft). Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa²-s) in the aforementioned experiment (Finneran *et al.* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels

for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

*Disturbance Reactions*

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.* 1995; Wartzok *et al.* 2004; Southall *et al.* 2007; Weilgart 2007). Behavioral responses to sound are highly variable and context specific. For each potential behavioral change, the magnitude of the change ultimately determines the severity of the response. A number of factors may influence an animal's response to noise, including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.* 2003/04). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing noise levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.* 1995; NRC 2003; Wartzok *et al.* 2003/04).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.* 1997; Finneran *et al.* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; CALTRANS 2001, 2006; see also Gordon *et al.* 2004; Wartzok *et al.* 2003/04; Nowacek *et al.* 2007). Responses to continuous noise, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (CALTRANS 2001, 2006). Since pile driving will likely only occur for a few hours a day, over a short period of time, it is unlikely to result in permanent displacement. Any potential impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect the long-term fitness of the species.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.* 2007).

*Auditory Masking*

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because noise generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Masking has the potential to impact species at population, community, or even ecosystem levels, as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient noise levels, thus intensifying masking. However, the sum of noise from the proposed activities is confined in an area of inland waters (Hood Canal) that

is bounded by landmass; therefore, the noise generated is not expected to contribute to increased ocean ambient noise.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of California sea lions, harbor seals, transient killer whales, harbor porpoises, and Dall's porpoises. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in a negligible impact from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

*Airborne Noise Effects*

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving noise would have less impact on cetaceans than pinnipeds because noise from atmospheric sources does not transmit well underwater (Richardson *et al.* 1995); thus, airborne noise would only be an issue for hauled-out pinnipeds in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater noise. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms.

**Anticipated Effects on Habitat**

The proposed activities at NBKB will not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 10 km (6.2 mi), foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near NBKB and minor impacts to the immediate substrate during installation and removal of piles during the test pile program.

*Pile Driving Effects on Potential Prey (Fish)*

Construction activities will produce both pulsed (i.e., impact pile driving) and continuous (*i.e.,* vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005, 2009) identified several studies that suggest fish may relocate to avoid certain areas of noise energy. Additional studies have documented effects of pile driving (or other types of continuous sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (Scholik and Yan 2001, 2002; Govoni *et al.* 2003; Hawkins 2005; Hastings 1990, 2007; Popper *et al.* 2006; Popper and Hastings 2009). Sound pulses at received levels of 160 dB re 1 µPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Chapman and Hawkins 1969; Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality (CALTRANS 2001; Longmuir and Lively 2001). The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the test pile program. However, adverse impacts may occur to a few species of rockfish (bocaccio (*Sebastes paucispinis*) and yelloweye (*S. ruberrimus*) and canary (*S. pinniger*) rockfish) and salmon (chinook (*Oncorhynchus tshawytscha*) and summer run chum) which may still be present in the project area despite operating in a reduced work window in an attempt to avoid important fish spawning time periods. Impacts to these species could result from potential impacts to their eggs and larvae.

*Pile Driving Effects on Potential Foraging Habitat*

In addition, the area likely impacted by the test pile program is relatively small compared to the available habitat in the Hood Canal. Potentially a maximum of 1.82 $m^2$ (19.6 $ft^2$; based on a 60 in [1.5 m] diameter pile) of marine mammal foraging habitat may have decreased foraging value as each pile is driven. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the Hood Canal and nearby vicinity.

Given the short daily duration of noise associated with individual pile driving and removal, the short duration of the entire test pile program (forty work days), and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any essential fish habitat, or populations of fish species. Therefore, pile driving and removal is not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area. For more information, see the Navy's Draft Essential Fish Habitat Assessment (*see* **ADDRESSES**).

**Proposed Mitigation**

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of

effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The modeling results for zones of influence (ZOIs; see "Estimated Take by Incidental Harassment") were used to develop mitigation measures for pile driving activities at NBKB. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals. While the ZOIs vary between the different diameter piles and types of installation methods, the Navy is proposing to establish mitigation zones for the maximum zone of influence for all pile driving conducted in support of the test pile program. In addition to the measures described later, the Navy will employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) Comply with applicable equipment noise standards of the U.S. Environmental Protection Agency and ensure that all construction equipment has noise control devices no less effective than those provided on the original equipment.

(c) For in-water heavy machinery work other than pile driving (if it exists; *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 50 m (164 ft), operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

*Shutdown and Buffer Zone*

The following measures will apply to the Navy's mitigation through shutdown and buffer zones:

(a) The Navy will implement a minimum shutdown zone of 50 m (164 ft) radius around all pile driving activity. Shutdown zones typically include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) harassment criteria for marine mammals (180–dB isopleth for cetaceans; 190–dB isopleth for pinnipeds). In this case, piledriving sounds are expected to attenuate below 180 dB at distances of 22 m or less (Table 3), but the 50-m shutdown is intended to further avoid the risk of direct interaction between marine mammals and the equipment.

(b) The buffer zone shall include all areas where the underwater SPLs are anticipated to equal or exceed the 160-dB harassment isopleths. The radius of this zone will be 464 m (1,522 ft) at the start of pile driving work, but may be adjusted according to empirical, site-specific data after the project begins. The size of the 120–dB buffer zone for vibratory pile driving makes monitoring impracticable (see "Sound Thresholds"; Table 3).

(c) The shutdown and buffer zones will be monitored throughout the time required to drive a pile. If a marine mammal is observed entering the buffer zone, a "take" would be recorded and behaviors documented. However, that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted.

(d) All buffer and shutdown zones will initially be based on the distances from the source that are predicted for each threshold level. However, in-situ acoustic monitoring will be utilized to determine the actual distances to these threshold zones, and the size of the shutdown and buffer zones will be adjusted accordingly based on received sound pressure levels.

*Visual Monitoring*

*Impact Installation*—Monitoring will be conducted for a minimum 50 m (164 ft) shutdown zone and a 464 m (1,522 ft) buffer zone (Level B harassment) surrounding each pile for the presence of marine mammals before, during, and after pile driving activities. Monitoring will take place from thirty minutes prior to initiation through thirty minutes post-completion of pile driving activities.

*Vibratory Installation*—Monitoring will be conducted for a 50 m (164 ft) shutdown zone. The 120-dB disturbance criterion predicts an affected area of 41.5 $km^2$ (16 $mi^2$). Due to the impracticality of effectively monitoring such a large area, the Navy intends to monitor a buffer zone equivalent to the size of the Level B disturbance zone for impact pile driving (464 m) surrounding each pile for the presence of marine mammals before, during, and after pile driving activities. Sightings occurring outside this area will still be recorded and noted as a take, but detailed observations outside this zone will not be possible, and it would be impossible for the Navy to account for all individuals occurring in such a zone with any degree of certainty. Monitoring will take place from thirty minutes prior to initiation through thirty minutes post-completion of pile driving activities.

The following additional measures will apply to visual monitoring:

(a) Monitoring will be conducted by qualified observers. A trained observer will be placed from the best vantage point(s) practicable (*e.g.,* from a small boat, the pile driving barge, on shore, or any other suitable location) to monitor for marine mammals and implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.

(b) Prior to the start of pile driving activity, the shutdown and safety zones will be monitored for thirty minutes to ensure that they are clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the buffer zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented.

(c) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, pile driving will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or thirty minutes have passed without re-detection of the animal.

*Sound Attenuation Devices*

Sound attenuation devices will be utilized during all impact pile driving operations. Impact pile driving is only expected to be required to proof, or drive the last 10–15 ft (3–4.6 m) of each pile. The Navy plans to use a Gunderboom Sound Attenuation System (SAS) as mitigation for in-water sound during construction activities. The Gunderboom SAS is a multipurpose enclosure that absorbs sound, attenuates pressure waves, excludes marine life from work areas, and controls the migration of debris, sediments and process fluids. The Gunderboom SAS is comprised of a water-permeable double layer of polypropylene/polyester fabric. Compressed air is released at the bottom of the fabric and moves up to the top of the fabric, inflating the fabric and creating a wall. A traditional bubble curtain will be used as a backup mitigation if the Navy cannot obtain the Gunderboom SAS or if it does not achieve the proposed noise attenuation. The Navy will also test the feasibility and effectiveness of using sound attenuation devices with vibratory

hammers. The Navy will employ the Gunderboom SAS or bubble curtain on two of the vibratory-driven piles to test the practicability of this concept.

*Acoustic Measurements*

Acoustic measurements will be used to empirically verify the proposed shutdown and buffer zones. For further detail regarding the Navy's acoustic monitoring plan see "Proposed Monitoring and Reporting".

*Timing Restrictions*

The Navy has set timing restrictions for pile driving activities to avoid in-water work when ESA-listed fish populations are most likely to be present. The in-water work window for avoiding negative impacts to fish species is July 16–February 15. Further, the Navy has narrowed its work window to avoid times of year when ESA-listed Steller sea lions may be present at the project area. Therefore, all pile driving would only occur between July 16–October 31 of the approved in-water work window from July 16 through February 15 to minimize the number of fish exposed to underwater noise and other disturbance, and to avoid times when Steller sea lions are expected to be present.

*Soft Start*

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning, or providing marine mammals a chance to leave the area prior to the hammer operating at full capacity. The test pile program will utilize soft-start techniques (ramp-up and dry fire) recommended by NMFS for impact and vibratory pile driving. The soft-start requires contractors to initiate noise from vibratory hammers for fifteen seconds at reduced energy followed by a one minute waiting period. This procedure will be repeated two additional times. For impact driving, contractors will be required to provide an initial set of three strikes from the impact hammer at forty percent energy, followed by a one minute waiting period, then two subsequent three strike sets.

*Daylight Construction*

Pile driving will only be conducted between two hours post-sunrise through two hours prior to sunset (civil twilight).

*Mitigation Effectiveness*

It should be recognized that although marine mammals will be protected from Level A harassment by the utilization of a bubble curtain and protected species observers (PSOs) monitoring the near-field injury zones, mitigation may not be 100 percent effective at all times in locating marine mammals in the buffer zone. The efficacy of visual detection depends on several factors including the observer's ability to detect the animal, the environmental conditions (visibility and sea state), and monitoring platforms.

All observers utilized for mitigation activities will be experienced biologists with training in marine mammal detection and behavior. Due to their specialized training the Navy expects that visual mitigation will be highly effective. Trained observers have specific knowledge of marine mammal physiology, behavior, and life history, which may improve their ability to detect individuals or help determine if observed animals are exhibiting behavioral reactions to construction activities.

The Puget Sound region, including the Hood Canal, only infrequently experiences winds with velocities in excess of 25 kt (Morris *et al.* 2008). The typically light winds afforded by the surrounding highlands coupled with the fetch-limited environment of the Hood Canal result in relatively calm wind and sea conditions throughout most of the year. The test pile program project site has a maximum fetch of 8.4 mi (13.5 km) to the north, and 4.2 mi (6.8 km) to the south, resulting in maximum wave heights of from 2.85–5.1 ft (0.9–1.6 m) (Beaufort Sea State (BSS) between two and four), even in extreme conditions (30 kt winds) (CERC 1984). Visual detection conditions are considered optimal in BSS conditions of three or less, which align with the conditions that should be expected for the test pile program at NBKB.

Observers will be positioned in locations which provide the best vantage point(s) for monitoring. This will likely be an elevated position, providing a better range of viewing angles. Also, the shutdown and buffer zones have relatively small radii to monitor, which should improve detectability.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

*Acoustic Measurements*

The Navy will conduct acoustic monitoring for impact driving of steel piles in order to determine the actual distances to the 190–, 180–, and 160–dB (re 1 μPa rms) isopleths and to determine the relative effectiveness of the bubble curtain system at attenuating noise underwater. The Navy will also conduct acoustic monitoring for vibratory pile driving in order to determine the actual distance to the 120-dB isopleth for behavioral harassment relative to background levels. The monitoring plan addresses both underwater and airborne sounds from the test pile program. At a minimum, the methodology will include:

(1) A stationary hydrophone placed at mid-water depth and 10 m (33 ft) from the source pile to measure the effectiveness of the bubble curtain system; a weighted tape measure will be used to determine the depth of the water. The hydrophone will be attached to a nylon cord or steel chain if current is swift enough, to maintain a constant distance from the pile. The nylon cord or chain will be attached to a float or

tied to a static line at the surface 10 m from the piles.

(2) All hydrophones will be calibrated at the start of the action and will be checked at the beginning of each day of monitoring activity.

(3) For each monitored location, a two-hydrophone setup will be used, with the first hydrophone at mid-depth and the second hydrophone at approximately 1 m (3.3 ft) from the bottom in order to evaluate site specific attenuation and propagation characteristics that may be present throughout the water column.

(4) In addition to determining the area encompassed by the 190–, 180–, 160–, and 120–db rms isopleths for marine mammals, hydrophones would also be placed at other distances as appropriate to accurately capture spreading loss occurring at the test pile project area.

(5) Ambient conditions, both airborne and underwater, would be measured at the project site in the absence of construction activities to determine background sound levels. Ambient levels are intended to be recorded over the frequency range from 10 Hz to 20 kHz. Ambient conditions will be recorded for one minute every hour of the work day, for one week of each month of the test pile program.

(6) Sound levels associated with soft-start techniques will also be measured.

(7) Underwater sound pressure levels would be continuously monitored during the entire duration of each pile being driven. Sound pressure levels will be monitored in real time. Sound levels will be measured in Pascals, which are easily converted to decibel units.

(8) Airborne levels would be recorded as unweighted, as well as in dBA, and the distance to marine mammal thresholds would be measured.

(9) The effectiveness of using a bubble curtain system with a vibratory hammer will be tested during the driving of two vibratory piles. The on/off regime described in Table 9 will be utilized during the pile installation:

TABLE 9—SCHEDULE FOR TESTING EFFECTIVENESS OF SOUND ATTENUATION DEVICE

| Pile driving timeframe | Sound attenuation device condition |
|---|---|
| Initial 30 s | Off |
| Next minute (minimum) | On |
| Middle of pile driving segment 30 s. | Off |
| Next minute (minimum) | On |
| Final 30 s | Off |

(10) Environmental data would be collected, including, but not limited to: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions and other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats).

(11) The chief inspector would supply the acoustics specialist with the substrate composition, hammer model and size, hammer energy settings and any changes to those settings during the piles being monitored, depth of the pile being driven, and blows per foot for the piles monitored.

(12) Post-analysis of the sound level signals will include determination of absolute peak overpressure and under pressure levels recorded for each pile, rms value for each absolute peak pile strike, rise time, average duration of each pile strike, number of strikes per pile, SEL of the absolute peak pile strike, mean SEL, and cumulative SEL (accumulated SEL = single strike SEL + 10*log (number of hammer strikes) and a frequency spectrum both with and without mitigation, between 10–20,000 Hz for up to eight successive strikes with similar sound levels.

*Visual Marine Mammal Observations*

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors. NMFS requires that the observers have no other construction related tasks while conducting monitoring.

*Methods of Monitoring*—The Navy will monitor the shutdown zone and safety (buffer) zone before, during, and after pile driving. Based on NMFS requirements, the Marine Mammal Monitoring Plan would include the following procedures for impact pile driving:

(1) MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and safety zone. This may require the use of a small boat to monitor certain areas while also monitoring from one or more land based vantage points.

(2) During all observation periods, observers would use binoculars and the naked eye to search continuously for marine mammals.

(3) To verify the required monitoring distances, the zones would be clearly marked with buoys or other suitable aquatic markers.

(4) If the shut down or safety zones are obscured by fog or poor lighting conditions, pile driving would not be initiated until all zones are visible.

(5) The shut down and safety zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving activity.

*Pre-Activity Monitoring*—The shutdown and buffer zones will be monitored for thirty minutes prior to initiating the soft start for pile driving. If marine mammal(s) are present within the shut down zone prior to pile driving or during the soft start, the start of pile driving would be delayed until the animal(s) leave the shut down zone. Pile driving would resume only after the PSO has determined, through sighting or by waiting approximately thirty minutes, that the animal(s) has moved outside the shutdown zone.

*During Activity Monitoring*—The shutdown and buffer zones will also be monitored throughout the time required to drive a pile. If a marine mammal is observed entering the buffer zone, a "take" would be recorded and behaviors documented. However, that pile segment would be completed without cessation, unless the animal enters or approaches the shutdown zone, at which point all pile driving activities will be halted. Pile driving can only resume once the animal has left the shutdown zone of its own volition or has not been re-sighted for a period of thirty minutes.

*Post-Activity Monitoring*—Monitoring of the shutdown and buffer zones would continue for thirty minutes following the completion of pile driving.

*Data Collection*

NMFS requires that the PSOs use NMFS-approved sighting forms. In addition to the following requirements, the Navy will note in their behavioral observations whether an animal remains in the project area following a Level B taking (which would not require cessation of activity). This information will ideally make it possible to determine whether individuals are taken (within the same day) by one or more types of pile driving (i.e., impact and vibratory). NMFS requires that, at a minimum, the following information be collected on the sighting forms:

(1) Date and time that pile driving begins or ends;

(2) Construction activities occurring during each observation period;

(3) Weather parameters identified in the acoustic monitoring (e.g., wind, humidity, temperature);

(4) Tide state and water currents;

(5) Visibility;

(6) Species, numbers, and, if possible, sex and age class of marine mammals;

(7) Marine mammal behavior patterns observed, including bearing and direction of travel, and if possible, the correlation to sound pressure levels;

(8) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(9) Locations of all marine mammal observations; and

(10) Other human activity in the area.

*Reporting*

A draft report would be submitted to NMFS within 45 days of the completion of acoustic measurements and marine mammal monitoring. The results would be summarized in graphical form and include summary statistics and time histories of impact sound values for each pile. A final report would be prepared and submitted to NMFS within thirty days following receipt of comments on the draft report from NMFS. At a minimum, the report shall include:

(1) Size and type of piles;

(2) A detailed description of the SAS or bubble curtain, including design specifications;

(3) The impact or vibratory hammer force used to drive and extract the piles;

(4) A description of the monitoring equipment;

(5) The distance between hydrophone(s) and pile;

(6) The depth of the hydrophone(s);

(7) The depth of water in which the pile was driven;

(8) The depth into the substrate that the pile was driven;

(9) The physical characteristics of the bottom substrate into which the piles were driven;

(10) The ranges and means for peak, rms, and SELs for each pile;

(11) The results of the acoustic measurements, including the frequency spectrum, peak and rms SPLs, and single-strike and cumulative SEL with and without the attenuation system;

(12) The results of the airborne noise measurements including dBA and unweighted levels;

(13) A description of any observable marine mammal behavior in the immediate area and, if possible, the correlation to underwater sound levels occurring at that time;

(14) Results, including the detectability of marine mammals, species and numbers observed, sighting rates and distances, behavioral reactions within and outside of safety zones; and

(15) A refined take estimate based on the number of marine mammals observed in the safety and buffer zones. This may be reported as one or both of the following: a rate of take (number of marine mammals per hour), or take based on density (number of individuals within the area).

**Estimated Take by Incidental Harassment**

With respect to the activities described here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered remote. However, as noted earlier, there is no specific information demonstrating that injurious or lethal "takes" would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to an underwater sound by changing its behavior or moving a small distance, the response may or may not rise to the level of "taking", or affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder 2007; Weilgart 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals taken. For example, during the past ten years, killer whales have been observed within the project area twice. While a pod of killer whales could potentially visit again during the project timeframe, and thus be "taken", it is more likely that they will not.

The proposed project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals are year-round residents of Hood Canal. Therefore, behavioral disturbances that could result from anthropogenic noise associated with the proposed activities are expected to affect only a small number of marine mammals on an infrequent basis.

The Navy is requesting authorization for the potential taking of small numbers of California sea lions, harbor seals, transient killer whales, Dall's porpoises, and harbor porpoises in the Hood Canal that may result from pile driving during construction activities associated with the test pile program described previously in this document. The takes requested are expected to have no more than a minor effect on individual animals and no effect on the populations of these species. Any effects experienced by individual marine mammals are anticipated to be limited to short-term disturbance of normal behavior or temporary displacement of animals near the source of the noise.

*Description of Take Calculation*

The take calculations presented here rely on the best data currently available for marine mammal populations in the Hood Canal, as discussed in preceding sections. The formula was developed for calculating take due to impact pile driving and applied to each group-specific noise impact threshold. The formula is founded on the following assumptions:

(a) Each species population is at least as large as any previously documented highest population estimate.

(b) All pilings to be installed would have a noise disturbance distance equal to the piling that causes the greatest noise disturbance (*i.e.,* the piling furthest from shore).

(c) Pile driving could potentially occur every day of the forty day in-water work window. However, it is estimated that an average of two piles will be installed and removed per day. Therefore, a best estimate of the number of days during which pile driving would occur is fifteen days, and this was used in all modeling calculations.

(d) Some degree of mitigation (*i.e.,* sound attenuation system, etc.) will be utilized, as discussed previously.

(e) An individual can only be taken once per method of installation during a 24 hr period.

The calculation for marine mammal takes is estimated by:

Take estimate = (n * ZOI) * 15 days of total activity

Where:

n = density estimate used for each species/season

ZOI = noise threshold zone of influence (ZOI) impact area; the area encompassed by all locations where the sound pressure levels equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure

The ZOI impact area is the estimated range of impact to the noise criteria. The distances (actual) specified in Table 4 were used to calculate ZOI around each pile. All impact pile driving take calculations were based on the estimated threshold ranges using a bubble curtain with 10 dB attenuation as a mitigation measure. The ZOI impact area took into consideration the possible affected area of the Hood Canal from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the canal. Because of the close proximity of some of the piles to the shore, the narrowness of the canal at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated.

As discussed previously in this document, the project entails forty days of total in-water work time. However, the Navy estimates that only fifteen days of pile driving will occur, with two piles driven per day. For each pile installed, vibratory pile driving is expected to be no more than one hour. The impact driving portion of the project is anticipated to take approximately fifteen minutes per pile with no more than 100 blows executed per day. All piles will be extracted using a vibratory hammer. Extraction is anticipated to take approximately thirty minutes per pile. Overall, this results in a maximum of two hours of pile driving per pile, or approximately four hours per day. Impacts were modeled as if the action were to occur for a duration of fifteen days, and conservatively used an average of eight to nine hours per workday (two hours post-sunrise to two hours prior to sunset).

The exposure assessment methodology is an estimate of the numbers of individuals exposed to the effects of pile driving activities exceeding NMFS-established thresholds. Of significant note in these exposure estimates, additional mitigation methods (*i.e.,* visual monitoring and the use of shutdown zones) were not quantified within the assessment and successful implementation of this mitigation is not reflected in exposure estimates. However, modeling did incorporate, for impact driving, a 10 dB reduction in SPL resulting from the use of sound attenuation devices. Results from acoustic impact exposure assessments should be regarded as conservative estimates that are strongly influenced by limited biological data. While the numbers generated from the pile driving exposure calculations provide conservative estimates of marine mammal exposures for consultation with NMFS, the short duration and limited geographic extent of the test pile project would likely further limit actual exposures.

*California Sea Lion*

California sea lions are present in the Hood Canal almost year-round with the exception of mid-June through August. The Navy conducted year round waterfront surveys for marine mammals at NBKB in 2008 and 2009 (DoN 2010a). During these surveys, the daily maximum number of California sea lions hauled out for the months July–October (the timeframe of the test pile program), were 0, 0, 12, and 47 in 2008 and 0, 1, 32, and 44 in 2009, respectively. The monthly average of the maximum number of California sea lions observed per day was seventeen individuals. Females are rarely observed north of the California-Oregon border (NMFS 2008c); therefore only adult and sub-adult males are expected in the Hood Canal. Breeding rookeries are in California; therefore pups are not expected to be present in the Hood Canal.

California sea lions are not likely to be present at the project site during the entire period of work (*i.e.,* are infrequent visitors during July–August). However, because the proportion of pile driving that could occur in a given month is dependent on several factors (*e.g.,* availability of materials, weather) the Navy assumed that pile driving operations could occur at any time in the construction window. Therefore, exposures were calculated using the monthly average of the maximum number of California sea lions observed per day (seventeen individuals), divided by the potential acoustic impact area (41.5 $km^2$ [16 $mi^2$]) and the formula given previously. Table 10 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving both underwater and in-air for each season. The modeling indicated that zero California sea lions were likely to be exposed to sound in the 160-dB zone. However, the Navy feels that, based on the abundance of this species in the waters along NBKB and including their presence at nearby haul-outs, it is possible that an individual could pass through this zone in transit to or from a haul-out. Therefore, the Navy is requesting a behavioral harassment take of California sea lion by impact pile driving each day of pile driving, for a total of fifteen takes over the course of the proposed action.

*Harbor Seal*

Harbor seals are present in the Hood Canal year-round and would be expected at the project site. Harbor seal numbers increase from January through April and then decrease from May through August as the harbor seals move to adjacent bays on the outer coast of Washington for the pupping season. Harbor seals are the most abundant marine mammal in the Hood Canal. Jeffries *et al.* (2003) did a stock assessment of harbor seals in the Hood Canal in 1999 and counted 711 harbor seals hauled out. This abundance was adjusted using a correction factor of 1.53 to account for seals in the water and not counted to provide a population estimate of 1,088 harbor seals in the Hood Canal. The Navy conducted boat surveys of the waterfront area in 2008 from July to September (Agness and Tannenbaum 2009a). Harbor seals were sighted during every survey and were found in all marine habitats including near and hauled-out on man-made objects such as piers and buoys. During most of the year, all age and sex classes (except newborn pups) could occur in the project area throughout the period of construction activity. From April through mid-July, female harbor seals haul out on the outer coast of Washington at pupping sites to give birth. Since there are no known pupping sites in the vicinity of the project, harbor seal pups are not expected to be present during pile driving. The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas at Quilcene, Dosewallips, Duckabush, Hamma Hamma, and Skokomish River mouths, with the closest haul-out area to the project area being ten miles (16 km) southwest of NBKB at Dosewallips River mouth (London 2006). Please see Figure 4–1 of the Navy's application for a map of haul-out locations in relation to the project area.

Research by Huber *et al.* (2001) indicates that approximately 35 percent of harbor seals are in the water at any one time. Exposures were calculated using a density derived from the number of harbor seals that are present in the water at any one time (35 percent of 1,088, or approximately 381 individuals), divided by the area of the Hood Canal (291 $km^2$ [112 $mi^2$]) and the formula presented previously.

While Huber *et al.*'s (2001) data suggest that harbor seals typically spend 65 percent of their time hauled out, the Navy's waterfront surveys found that it is extremely rare for harbor seals to haul out in the vicinity of the test pile project area. Therefore, the only population of

harbor seals that could potentially be exposed to airborne sounds are those that are in-water but at the surface. Based on the diving cycle of tagged harbor seals near the San Juan Islands, the Navy estimates that seals are on the surface approximately 16.4 percent of their total in-water duration (Suryan and Harvey 1998). Therefore, by multiplying the percentage of time spent at the surface (16.4 percent) by the total in-water population of harbor seals at any one time (approximately 381 individuals), the population of harbor seals with the potential to experience airborne impacts (approximately 63 individuals) can be obtained. Airborne exposures were calculated using a density derived from the maximum number of harbor seals available at the surface (approximately 63 individuals), divided by the area of the Hood Canal (291 $km^2$) and the formula presented previously. Table 10 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving both underwater and in-air for each season.

*Killer Whales*

Transient killer whales are uncommon visitors to Hood Canal. Transients may be present in the Hood Canal anytime during the year and traverse as far as the project site. Resident killer whales have not been observed in Hood Canal, but transient pods (six to eleven individuals per event) were observed in Hood Canal for lengthy periods of time (59–172 days) in 2003 (January–March) and 2005 (February–June), feeding on harbor seals (London 2006).

These whales used the entire expanse of Hood Canal for feeding. Subsequent aerial surveys suggest that there has not been a sharp decline in the local seal population from these sustained feeding events (London 2006). Based on this data, the density for transient killer whales in the Hood Canal for January to June is 0.038/$km^2$ (0.015/$mi^2$; eleven individuals divided by the area of the Hood Canal [291 $km^2$]). Since this timeframe overlaps the period in which the test pile program will occur (July–October), this density was used for all exposure calculations. Exposures were calculated using the formula presented previously. Table 10 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving for each season. The modeling indicated that zero killer whales were likely to be exposed to sound in the 160-dB zone. However, while transient killer whales are rare in the Hood Canal, when these animals are present they occur in pods, so their density in the project area is unlikely to be uniform, as was modeled. If they are present during impact pile driving it is possible that one or more individuals within a pod could travel through the behavioral harassment zone. Therefore, the Navy is requesting nine behavioral takes of transient killer whales—based on the average size of pods seen previously in the Hood Canal—by impact pile driving over the course of the proposed action.

*Dall's Porpoise*

Dall's porpoises may be present in the Hood Canal year-round and could occur as far as the project site. Their use of inland Washington waters, however, is mostly limited to the Strait of Juan de Fuca. The Navy conducted boat surveys of the waterfront area in 2008 from July to September (Agness and Tannenbaum 2009a). During one of the surveys a Dall's porpoise was sighted in August in the deeper waters off Carlson Spit.

In the absence of an abundance estimate for the entire Hood Canal, a seasonal density (warm season only [May–Oct]) was derived from the waterfront survey by the number of individuals seen divided by total number of kilometers of survey effort (six surveys with approximately 3.9 $km^2$ [1.5 $mi^2$] of effort each), assuming strip transect surveys. In absence of any other survey data for the Hood Canal, this density is assumed to be throughout the project area. Exposures were calculated using the formula presented previously. Table 10 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving for each season. The modeling indicated that zero Dall's porpoises were likely to be exposed to sound in the 160-dB zone. Dall's porpoises are rare in the Hood Canal; only one animal, seen in deep waters offshore from the base, has been seen in the project area in the past few years. However, it is possible that additional animals exist or that this single individual could pass through the behavioral harassment zone for impulse sounds (160-dB) while transiting along the waterfront. Therefore, the Navy is requesting a single behavioral harassment take of a Dall's porpoise by impact pile driving over the course of the proposed action.

*Harbor Porpoise*

Harbor porpoises may be present in the Hood Canal year-round; however, their presence is rare. During waterfront surveys of NBKB over the past two years (2008–present) only one harbor porpoise has been seen in 24 surveys.

The Navy conducted boat surveys of the waterfront area from July to September over the past few years (2008–present) (Agness and Tannenbaum 2009a). During one of the surveys a single harbor porpoise was sighted in the deeper waters offshore from the waterfront. In the absence of an abundance estimate for the entire Hood Canal, a seasonal density (warm season only) was derived from the waterfront survey by the number of individuals seen divided by total number of kilometers of survey effort (24 surveys with approximately 3.9 $km^2$ [1.5 $mi^2$] of effort each), assuming strip transect surveys. In the absence of any other survey data for the Hood Canal, this density is assumed to be throughout the project area. Exposures were calculated using the formula presented previously; Table 10 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving for each season. The modeling indicated that zero harbor porpoises were likely to be exposed to sound in the 120-dB zone. However, while harbor porpoises are rare, one has been sighted in surveys over the last few years in the deep waters offshore from the base. It is possible this offshore region is encapsulated within the vibratory disturbance zone due to its size (41.5 $km^2$ [16 $mi^2$]). Therefore, based on the possibility that this animal could be present in the offshore waters during every day of construction, the Navy is requesting a single behavioral take of harbor porpoise by vibratory pile driving each day of pile driving, for a total of fifteen takes over the course of the proposed action.

Potential takes could occur if individuals of these species move through the area on foraging trips when pile driving is occurring. Individuals that are taken could exhibit behavioral changes such as increased swimming speeds, increased surfacing time, or decreased foraging. Most likely, individuals may move away from the sound source and be temporarily displaced from the areas of pile driving. Potential takes by disturbance would have a negligible short-term effect on individuals and would not result in population-level impacts.

TABLE 10—NUMBER OF POTENTIAL WARM SEASON (MAY–OCT) EXPOSURES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

| Species | Density | Underwater | | | Airborne | Total (percent of stock or population [3]) |
|---|---|---|---|---|---|---|
| | | Impact injury threshold [1] | Impact disturbance threshold (160 dB) | Vibratory disturbance threshold (120 dB) | Impact & vibratory disturbance threshold [2] | |
| California sea lion | 0.410 | 0 | *15 | 255 | 0 | 270 (0.01) |
| Harbor seal | 1.31 | 0 | 15 | 810 | 0 [4] | 825 (5.6) |
| Killer whale | 0.038 | 0 | *9 | 30 | N/A | 39 (12.4) |
| Dall's porpoise | 0.043 | 0 | *1 | 30 | N/A | 31 (0.06) |
| Harbor porpoise | 0.011 | 0 | 0 | *15 | N/A | 15 (0.1) |
| Total | 0 | 40 | 1140 | 0 | 1180 | |

* See species descriptions for discussion of these estimates.
[1] Acoustic injury threshold for impact pile driving is 190 dB for pinnipeds and 180 dB for cetaceans.
[2] Acoustic disturbance threshold is 100 dB for California sea lions; 90 dB for harbor seals. The airborne exposure calculations assume that 100% of the in-water densities were available at the surface to be exposed to airborne sound.
[3] See Table 8 for stock or population numbers.
[4] Airborne densities were based on the percentage (16.4 percent) of in-water density available at the surface to be exposed (Suryan and Harvey 1998).

During the project timeframe, which occurs entirely in the May to October warm season, there is the potential for forty Level B disturbance takes (160-dB, impulse sound) of various species from impact pile driving operations, and an additional 1,140 Level B disturbance takes (120-dB, continuous sound) of various species from vibratory pile driving due to underwater sound. The following species and numbers of Level B disturbance takes could occur due to underwater sound as a result of impact pile driving operations: fifteen California sea lions, fifteen harbor seals, nine transient killer whales, and one Dall's porpoise. The following species and numbers of Level B disturbance takes could occur due to underwater sound as a result of vibratory pile driving operations: 255 California sea lions, 810 harbor seals, thirty transient killer whales, thirty Dall's porpoises, and fifteen harbor porpoises. Due to their lack of presence within the project area during the timeframe for the test pile program (July 16–Oct 31), no Steller sea lions would be harassed. Lastly, no species of pinnipeds are expected to be exposed to airborne sound pressure levels that would cause harassment.

**Negligible Impact and Small Numbers Analysis and Preliminary Determination**

NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Pile driving activities associated with the test pile program, as outlined previously, have the potential to disturb or displace small numbers of marine mammals. Specifically, the proposed activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne or underwater sounds generated from pile driving. Level A harassment is not anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals. Specifically, vibratory hammers will be the primary method of installation, which are not expected to cause injury to marine mammals due to the relatively low source levels (less than 190 dB). Also, no impact pile driving will occur without the use of a noise attenuation system (*e.g.,* bubble curtain), and pile driving will either not start or be halted if marine mammals approach the shutdown zone (described previously in this document). Furthermore, the pile driving activities analyzed are similar to other nearby construction activities within the Hood Canal, such as test piles driven in 2005 for the Hood Canal Bridge (SR–104) constructed by the Washington Department of Transportation, which have taken place with no reported injuries or mortality to marine mammals.

NMFS has preliminarily determined that the impact of the previously described test pile program may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. No mortality or injuries are anticipated as a result of the specified activity, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. For pinnipeds, the absence of any major rookeries and only a few isolated haul-out areas near or adjacent to the project site means that potential takes by disturbance will have an insignificant short-term effect on individuals and would not result in population-level impacts. Similarly, for cetacean species the absence of any regular occurrence adjacent to the project site means that potential takes by disturbance will have an insignificant short-term effect on individuals and would not result in population-level impacts. Due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival. This activity is expected to result in a negligible impact on the affected species or stocks. None of the species for which take authorization is requested are either ESA-listed or considered depleted under the MMPA.

For reasons stated previously in this document, the negligible impact determination is also supported by the likelihood that, given sufficient "notice" through mitigation measures including soft start, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious, and the likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for

Hood Canal, enabling the implementation of shut-downs to avoid injury, serious injury, or mortality. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small relative to regional stock or population number, and has been mitigated to the lowest level practicable through incorporation of the proposed mitigation and monitoring measures mentioned previously in this document.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the proposed test pile program will result in the incidental take of small numbers of marine mammal, by Level B harassment only, and that the total taking from the activity will have a negligible impact on the affected species or stocks.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

No tribal subsistence hunts are held in the vicinity of the project area; thus, temporary behavioral impacts to individual animals would not affect any subsistence activity. Further, no population or stock level impacts to marine mammals are anticipated or authorized. As a result, no impacts to the availability of the species or stock to the Pacific Northwest treaty tribes are expected as a result of the proposed activities. Therefore, no relevant subsistence uses of marine mammals are implicated by this action.

**Endangered Species Act (ESA)**

There is one marine mammal species that is listed as endangered under the ESA with confirmed or possible occurrence in the study area: the Eastern DPS of the Steller sea lion. However, as described previously, the project will occur from July 16–October 31 only, a time at which Steller sea lions are not present in the project area. The Navy conducted an informal consultation with the NWRO under Section 7 of the ESA; the NWRO concurred that there would be no presence of ESA-listed marine mammals during the project and that formal consultation was not required.

**National Environmental Policy Act (NEPA)**

In November 2010, the Navy prepared a draft EA, which has been posted on the NMFS Web site (*see* **ADDRESSES**) concurrently with the publication of this proposed IHA and public comments have been solicited. NMFS will review the draft EA and the public comments received and subsequently either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to the Navy's test pile program, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 18, 2011.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–1528 Filed 1–24–11; 8:45 am]

**BILLING CODE 3510–22–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, January 26, 2011; 10 a.m.–11 a.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the public.

**Matter To Be Considered**

*Compliance Status Report*

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: January 21, 2011.

**Todd A Stevenson,**

*Secretary.*

[FR Doc. 2011–1648 Filed 1–21–11; 4:15 pm]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Availability of the Fiscal Year 2009 Missile Defense Agency Services Contracts Inventory Pursuant to Section 807 of the 2008 National Defense Authorization Act

**AGENCY:** Missile Defense Agency (MDA), DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with section 2330a of Title 10 United States Code as amended by the National Defense Authorization Act for Fiscal Year 2008 (NDAA 08) Section 807, the Director of the Missile Defense Agency and the Office of the Director, Defense Procurement and Acquisition Policy, Office of Strategic Sourcing (DPAP/SS) will make available to the public the FY2009 inventory of activities performed pursuant to contracts for services. The inventory will be published to the Missile Defense Agency (MDA) Web site at the following location: *http://www.mda.mil/business/acquisition_center.html.*

**DATES:** Inventory to be made publicaly available within 30 days after publication of this notice.

**ADDRESSES:** Send written comments and suggestions concerning this inventory to Mr. Kim Triesler, Acquisition Analyst, MDA/DACP, 6700 Odyssey Dr, Ste. 206, Huntsville, AL 35806.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kim Triesler at (256) 971–9797 ext. 155 or e-mail *Kim.Triesler.ctr@mda.mil.*

Dated: January 19, 2011.

**Morgan F. Park,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–1520 Filed 1–24–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Charter Schools Program (CSP); Office of Innovation and Improvement; Overview Information; Charter Schools Program (CSP): State Educational Agencies Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282A.

**DATES:**

*Applications Available:* January 25, 2011.

*Deadline for Transmittal of Applications:* March 18, 2011.

*Deadline for Intergovernmental Review:* May 17, 2011.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the CSP is to increase national understanding of the charter school model (1) by expanding the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and (2) by evaluating the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. The Secretary awards grants to State educational agencies (SEAs) on a competitive basis to enable them to conduct charter school programs in their States. SEAs in turn use their CSP funds to make subgrants to eligible applicants in their State. These subgrants are used for planning, program design, and initial implementation of a charter school, and to support the dissemination of information about charter schools, including successful practices demonstrated by charter schools.

*Priorities and Definitions:* This competition includes seven competitive preference priorities, one invitational priority, and definitions. In accordance with 34 CFR 75.105(b)(1) and 34 CFR 75.105(b)(2)(iv), competitive preference priorities 1 through 4 are from section 5202(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7221a(e). Competitive preference priorities 5 through 7 and the definitions for *graduation rate, high-poverty school, open educational resources,* and *rural local educational agency* are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486). The definitions for *developer* and *eligible applicant* are from 20 U.S.C. 7221i.

*Competitive Preference Priorities:* For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 50 points to an application, depending on how well the application meets one or more of these priorities.

**Note:** In order to receive preference under priorities 1 through 7, an applicant must (a) Identify the priority or priorities that it believes it meets; (b) describe, in detail, how it meets the priority or priorities; and (c) provide documentation in support of its claims, including citations and examples from its State's charter school law, regulations, or policies. In order to receive points for priority 1 or to receive points for priorities 2 through 4, an application must meet priority 1 *and* must meet one or more of priorities 2 through 4.

An SEA that meets priority 1 but does not meet one or more of priorities 2 through 4 will not receive any points for priorities 1 through 4.

An SEA that does not meet priority 1 but meets one or more of priorities 2 through 4 will not receive any points for priorities 2 through 4.

The Notes following the competitive preference priorities are guidance to assist applicants in responding to the priorities and are not required by statute or regulation. However, we encourage applicants to consider those Notes in responding to the priorities.

These priorities are:

*Competitive Preference Priority 1—Periodic Review and Evaluation (up to 10 points).* The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years, unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter and is meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under State law or the school's charter.

**Note:** The Secretary invites the applicant to provide information regarding whether the periodic review that takes place at least once every five years includes a public vote on whether to terminate, extend, or renew a school's charter and on whether a failure to affirmatively renew or extend a school's charter during the periodic review that takes place at least once every five years would result in the charter school being closed.

*Competitive Preference Priority 2—Number of High-Quality Charter Schools (up to 8 points).* The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which an SEA applies for a grant under this competition.

**Note:** The Secretary invites the applicant to provide the following information: (1) Its definition of "high-quality charter school"; (2) the number of "high-quality charter schools" in the State and a description of how the rate has changed over the past five years; and (3) the percentage of "high-quality charter schools" in the State and a description of how the percentage has changed over the past five years.

*Competitive Preference Priority 3—One Authorized Public Chartering Agency Other than a Local Educational Agency (LEA), or an Appeals Process (5 points).* The State—

(a) Provides for one authorized public chartering agency that is not an LEA, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(b) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

*Competitive Preference Priority 4—High Degree of Autonomy (up to 5 points).* The State ensures that each charter school has a high degree of autonomy over the charter school's budget and expenditures.

*Competitive Preference Priority 5—Improving Achievement and High School Graduation Rates (up to 12 points).* Projects that are designed to address one or more of the following priority areas:

(a) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice) (up to 3 points).

(b) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students with disabilities (up to 3 points).

(c) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for English learners (up to 3 points).

(d) Accelerating learning and helping to improve high school graduation rates and college enrollment rates in high-poverty schools (as defined in this notice) (up to 3 points).

**Note:** For each population of students for which the applicant is seeking competitive priority points, the Secretary invites the applicant to discuss the steps it would take to meet the priority. For example, the applicant could describe any guidance or support it would provide to charter school developers to assist such developers in recruiting and providing high-quality services to students who are members of the particular student populations(s); how it would monitor charter schools in the State to ensure that they are taking effective and active steps to recruit and enroll students who are members of the particular student population(s); how it would monitor charter schools in the State to ensure that students who are members of the particular student population(s) are being served by such schools; or how it would design its subgrant competition, which may include the use of

preferences, to ensure that students who are members of the particular student population(s) are being served at rates equal to or greater than such students are being served in other schools in the area.

*Competitive Preference Priority 6—Promoting Diversity (up to 5 points).* Projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation.

**Note:** The Secretary invites the applicant to discuss how it would design its subgrant competition to meet this priority.

*Competitive Preference Priority 7—Improving Productivity (up to 5 points).* Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

*Invitational Priority:* Under this competition we are particularly interested in applications that address the following priority. For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications. This priority is:

*Support for Turnaround Schools.*

The Secretary is particularly interested in projects that are designed to turn around persistently low-performing schools by providing support for one or both of the following types of activities: (1) the creation of a charter school in coordination with an LEA in the vicinity of one or more public schools closed as a consequence of the LEA implementing a restructuring plan under section 1116(b)(8) of the ESEA; or (2) the creation of a new charter school under the restart model of intervention as described in the Final Requirements for School Improvement Grants as Amended in January 2010 at (*http://www2.ed.gov/programs/sif/faq.html*). Under the restart model of intervention, an LEA converts a school into a charter school or closes and reopens a school under a charter school operator, a charter management organization, or an education management organization that has been selected through a rigorous review process.

**Note:** For purposes of this invitational priority—

*Charter management organization* is a non-profit organization that operates, manages, or oversees multiple charter schools by centralizing or sharing certain functions and resources among schools.

*Educational management organization* is an organization that provides whole-school operation services.

Definitions

The following definitions are taken from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) and the CSP authorizing statute (20 U.S.C. 7221).

*Developer* means an individual or group of individuals (including a public or private non-profit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. (20 U.S.C. 7221i(2)).

*Eligible applicant* means a developer that has (a) applied to an authorized public chartering authority to operate a charter school; and (b) provided adequate and timely notice to that authority under section 5203(d)(3) of the ESEA. (20 U.S.C. 7221i(3)).

*Graduation rate* means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA. (75 FR 78509).

*High-poverty school* means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the ESEA. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data. (75 FR 78509).

*Open educational resources (OER)* means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others. (75 FR 78509).

*Rural local educational agency* means an LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.* (75 FR 78510).

*Program Authority:* 20 U.S.C. 7221–7221i; Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117.

**Note:** The Department anticipates that an authority similar to that in the Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117 will be included in the fiscal year 2011 appropriations act.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99; (b) The notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* We estimate that between $45,000,000 and $62,000,000 will be available for new awards for this program for FY 2011. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications we may make additional awards later in FY 2011 and in FY 2012 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $1,000,000–$15,000,000 per year.

*Estimated Average Size of Awards:* $5,000,000 per year.

*Estimated Number of Awards:* 7–12.

**Note:** The Department is not bound by any estimates in this notice. The estimated range, size, and number of awards are based on a single 12-month budget period. However, the Department may choose to fund more than 12 months of a project using the FY 2011 funds.

*Project Period:* Up to 36 months.

**Note:** Planning and implementation subgrants awarded by an SEA to non-SEA eligible applicants will be awarded for a period of up to three years, no more than 18 months of which may be used for planning

and program design and no more than two years of which may be used for the initial implementation of a charter school. Dissemination subgrants are awarded for a period of up to two years.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs in States with a State statute specifically authorizing the establishment of charter schools.

**Note:** Non-SEA eligible applicants in States in which the SEA elects not to participate in or does not have an application approved under the CSP may apply for funding directly from the Department. The Department plans to hold a separate competition for non-SEA eligible applicants under CFDA numbers 84.282B and 84.282C.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Leslie Hankerson, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W249, Washington, DC 20202–5970. *Telephone:* (202) 205–8524 or by *e-mail: Leslie.Hankerson@ed.gov.* If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

*Applications Available:* January 25, 2011.

*Deadline for Transmittal of Applications:* March 18, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* May 17, 2011.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* The following funding restrictions apply to this competition:

*Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School.* A non-SEA eligible applicant receiving a subgrant under this program may use the subgrant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources. (20 U.S.C. 7221c(f)(3))

*Use of Funds for Dissemination Activities.* An SEA may reserve not more than 10 percent of its grant funds to support dissemination activities (20 U.S.C. 7221c(f)(1)). A charter school may use those funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program) or to disseminate information about the charter school through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement (20 U.S.C. 7221c(f)(6)(B)(i) through (iv)).

*Award Basis.* In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the amount of any unobligated carryover funds the applicant has under an existing CSP grant and the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.233(b) and 75.217(d)(3)(ii)). In assessing applicant's performance and use of funds under a previous or existing award the Secretary will consider, among other things, the outcomes the applicant has achieved and the results

of any Departmental grant monitoring, as well as an applicant's progress in remedying any deficiencies identified in such monitoring.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CSP, CFDA number 84.282A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the CSP at *http://www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.326, not 84.326A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Leslie Hankerson, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W249, Washington, DC 20202–5970.

*FAX:* (202) 205–8524.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* 84.282A, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
*Attention:* 84.282A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Application Requirements:* Applicants applying for CSP grant funds must address the following application requirements, which are based on 20 U.S.C. 7221b(b) and 7221c(f), and the selection criteria described in this notice. An applicant may choose to respond to the application requirements in the context of its responses to the selection criteria.

(i) Describe the objectives of the SEA's charter school grant program and how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program;

(ii) Describe how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate;

(iii) Describe how the SEA will ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and a year in which the school's enrollment expands significantly;

(iv) Describe how the SEA will disseminate best or promising practices of charter schools to each LEA in the State;

(v) If an SEA elects to reserve part of its grant funds (no more than 10 percent) for the establishment of a revolving loan fund, describe how the revolving loan fund would operate;

(vi) If an SEA desires the Secretary to consider waivers under the authority of

the CSP, include a request and justification for any waiver of statutory or regulatory provisions that the SEA believes is necessary for the successful operation of charter schools in the State; and

(vii) Describe how charter schools that are considered to be LEAs under State law and LEAs in which charter schools are located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act.

2. *Selection Criteria:* The selection criteria for this competition are from 20 U.S.C. 7221c and 34 CFR 75.210 of EDGAR and the Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117. The Department anticipates that selection criteria similar to that in the Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117 will be included in the fiscal year 2011 appropriations act. The selection criteria are as follows:

SEAs that propose to use a portion of their grant funds for dissemination activities must address each selection criterion (i) through (vii) individually and title each accordingly. SEAs that do not propose to use a portion of their grant funds for dissemination activities must address selection criteria (i) through (v) and (vii) only. SEAs that do not address criterion (vi) because they are not proposing to use a portion of their grant funds for dissemination activities will not be penalized. The maximum possible score (based on the selection criteria and not including the competitive preference priorities) is 100 points for SEAs that do not propose to use grant funds to support dissemination activities and 110 points for SEAs that propose to use grant funds to support dissemination activities. The maximum possible score for each criterion is indicated in parentheses following the criterion. The Notes following the selection criteria are guidance to help applicants in preparing their applications and are not required by statute or regulation. However, we encourage applicants to consider those Notes in responding to the selection criteria.

(i) The contribution the charter schools grant program will make in assisting educationally disadvantaged and other students in meeting State academic content standards and State student academic achievement standards (20 points).

**Note:** The Secretary encourages the applicant to provide a description of the objectives for the SEA's charter school grant program and to explain how these objectives will be met, including steps that will be taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program and how the SEA will disseminate best or promising practices of charter schools to each LEA in the State.

(ii) The degree of flexibility afforded by the SEA to charter schools under the State's charter school law (20 points).

**Note:** The Secretary encourages the applicant to describe how the State's charter school law establishes an administrative relationship between charter schools and the authorized public chartering agency and exempts charter schools from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to describe the degree of autonomy charter schools in the State exercise over such matters as the charter school's budgets, expenditures, daily operation, schedules, curricula, and personnel in accordance with the State's charter school law.

(iii) The number of high-quality charter schools to be created in the State (20 points).

**Note:** The Secretary considers the SEA's reasonable estimate of the number of new high-quality charter schools that will be authorized and opened in the State during the project period.

The Secretary encourages the applicant to describe, in detail, its charter school subgrant application and peer review processes, how the peer review process will assess quality, and how the SEA will ensure that only high-quality charter school applicants (as defined by the applicant) are selected for funding. States that have received grants under this program previously are invited to provide data on the percentages of eligible applicants that were awarded subgrants and how this percentage related to the overall quality of applicants funded.

(iv) Quality of the management plan. In determining the quality of the management plan for the proposed project, the Secretary considers (a) the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and (b) how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and during a year in which the school's enrollment expands significantly (20 U.S.C. 7221b(b)(2)(A) and (B) and 7221e(a)) (10 points).

**Note:** The Secretary encourages the applicant to describe any compliance issues or findings related to the CSP that have been identified in an audit or other monitoring review, as well as the steps taken to address such compliance issues or findings.

(v) The SEA's plan to monitor and hold accountable authorized public chartering agencies through such activities as providing technical assistance or establishing a professional development program, which may include providing authorized public chartering agency staff with training and assistance on planning and systems development, so as to improve the capacity of those agencies to authorize, monitor, and hold accountable charter schools (20 points). Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117.

(vi) In the case of SEAs that propose to use grant funds to support dissemination activities under section 5204(f)(6)(B) of the ESEA, the quality of the dissemination activities (5 points) and the likelihood that those activities will improve student academic achievement (5 points).

**Note:** The Secretary encourages the applicant to describe the steps to be taken by the SEA to award these funds to eligible applicants, including a description of the peer review process the SEA will use to review applications for dissemination, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

Applicants that have previously awarded dissemination subgrants under this program are encouraged to describe the outcomes of such subgrants and to identify any improvements to the applicant's processes for awarding and administering dissemination subgrants.

(vii) Quality of the project evaluation. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data (10 points).

**Note:** The Secretary encourages the applicant to include a strong evaluation plan in the application narrative and to use that plan, as appropriate, to shape the development of the project from the beginning of the grant period. The Secretary encourages the applicant to design the plan so that it includes (a) benchmarks to monitor progress toward specific project objectives and (b) outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. In its plan, we encourage the applicant to

identify the individual and/or organization that will serve as the evaluator and to describe the qualifications of the evaluator. We also encourage the applicant to describe, in its application, the evaluation design, indicating: (1) The types of data that will be collected; (2) when various types of data will be collected; (3) the methods that will be used; (4) the instruments that will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has set two performance indicators to measure progress toward this goal: (1) The number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

6. *Project Director's Meeting:* Applicants approved for funding under this competition must attend a two-day meeting for project directors at a location to be determined in the continental United States during each year of the project. Applicants may include the cost of attending this meeting in their proposed budgets.

## VII. Agency Contacts

*For Further Information Contact:* Leslie Hankerson, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W249, Washington, DC 20202–5970. *Telephone:* (202) 205–8524 or by *e-mail: Leslie.Hankerson@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** of section VII in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 19, 2011.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2011–1518 Filed 1–24–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## American Overseas Research Centers (AORC) Program; Office of Postsecondary Education; Overview Information; American Overseas Research Centers (AORC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.274A.

Dates:

*Applications Available:* January 25, 2011.

*Deadline for Transmittal of Applications:* April 5, 2011.

*Deadline for Intergovernmental Review:* June 6, 2011.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The American Overseas Research Centers (AORC) Program makes awards to any American overseas research center that is a consortium of institutions of higher education to enable the center to promote postgraduate research, exchanges, and area studies.

AORC grants may be used to pay all or a portion of the cost of establishing or operating a center or program, including the cost of operation and maintenance of overseas facilities; the cost of organizing and managing conferences; the cost of teaching and research materials; the cost of acquisition, maintenance, and preservation of library collections; the cost of bringing visiting scholars and faculty to the center to teach or to conduct research; the cost of faculty and staff stipends and salaries; the cost of faculty, staff, and student travel; and the cost of publication and dissemination of materials for the scholarly and general public.

*Priorities:* Under this competition we are particularly interested in applications that address the following priority.

*Invitational Priority:* For FY 2011, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications that propose teaching or research activities conducted by visiting scholars and faculty in one of the seventy-eight (78) languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs): Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

*Program Authority:* 20 U.S.C. 1128a.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

### II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $108,360,000 for the International Education and Foreign Language Studies: Domestic Programs, of which we intend to allocate $1,400,000 for new awards for this competition in FY 2011. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

*Estimated Range of Awards:* $80,000–$130,000 per year.

*Estimated Average Size of Awards:* $116,667.

*Maximum Award:* We will reject any application that proposes a budget exceeding $130,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 12.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

### III. Eligibility Information

1. *Eligible Applicants:* Any American overseas research center that is a consortium of institutions of higher education that receives more than 50 percent of its funding from public or private United States sources; has a permanent presence in the country in which the center is located; and is an organization described in section 501(c)(3) of the Internal Revenue Code of 1993, which is exempt from taxation under section 501(a) of the Code.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

### IV. Application and Submission Information

1. *Address to Request Application Package:* Carla White, U.S. Department of Education, 1990 K Street, NW., room 6084, Washington, DC 20006–8521. Telephone: (202) 502–7631 or by e-mail: *carla.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. If you use charts, tables, figures, and graphs in the

application narrative, you may single space these. Charts, tables, figures, and graphs in the application narrative count toward the number of pages specified for the application narrative page limit.

• Use a font that is either 12-point or larger, or no smaller than 10 pitch (characters per inch). You may, however, use a 10-point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract, the resumes, or the proposed objectives for the project; the letters of support, and the list of institutions of higher education that constitute the consortium (center). However, the page limit does apply to all of the application narrative section.

We will reject your application if you exceed the page limit; or, if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: January 25, 2011.

Deadline for Transmittal of Applications: April 5, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 6, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationbrochure.pdf).*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the American Overseas Research Centers Program, CFDA number 84.274A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the AORC program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.274, not 84.274A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary

depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street, NW., room 6083, Washington, DC 20006–8521. FAX: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.274A),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by

hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.274A),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* Pursuant to 34 CFR 75.209(a) in EDGAR, selection criterion (1) is from section 609(a) of the HEA, and the remaining selection criteria are from 34 CFR 75.210 in EDGAR. The selection criteria are as follows:

(1) *Meets the purpose of the authorizing statute* (up to 20 points).

The Secretary evaluates an application by determining how well the project proposed by the applicant promotes postgraduate research, exchanges, and area studies.

(2) *Need for project* (up to 15 points).

In determining the need for the proposed project, the Secretary considers—

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(c) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(3) *Significance* (up to 10 points).

In determining the significance of the proposed project, the Secretary considers—

(a) The national significance of the proposed project.

(b) The significance of the problem or issue to be addressed by the proposed project.

(4) *Quality of the project design* (up to 10 points).

In determining the quality of the design of the proposed project, the Secretary considers—

(a) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(b) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(c) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(5) *Quality of project services* (up to 10 points).

In determining the quality of the services to be provided by the proposed project, the Secretary considers—

(a) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(6) *Quality of project personnel* (up to 10 points).

In determining the quality of project personnel, the Secretary considers—

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The qualifications, including relevant training and experience, of key project personnel.

(7) *Adequacy of resources* (up to 10 points).

In determining the adequacy of resources for the proposed project, the Secretary considers—

(a) The extent to which the budget is adequate to support the proposed project.

(b) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(8) *Quality of the project evaluation* (up to 15 points).

In determining the quality of the evaluation, the Secretary considers—

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or, is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in

the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.* Annual performance reports and final reports for the AORC Program must be submitted into the International Resource Information System (IRIS) online data and reporting system. You can view the performance report screens and instructions at *http://iris.ed.gov/iris/pdfs/AORC.pdf.*

4. *Performance Measures:* The AORC Program provides grants to consortia of institutions of higher education to establish or operate overseas research centers that promote postgraduate research, exchanges, and area studies. The Department has established the following measures as indicators of success for the AORC Program: Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

*AORC Performance Measure 1:* Percentage of AORC projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

*AORC Performance Measure 2:* Percentage of scholars who indicated they were "highly satisfied" with the services the center provided.

*AORC Performance Measure 3:* Cost per high-quality, successfully-completed AORC project.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

*For Further Information Contact:* Cheryl E. Gibbs, International and Foreign Language Education (IFLE) Service, U.S. Department of Education, 1990 K Street, NW., room 6083, Washington, DC 20006–8521. Telephone: (202) 502–7634 or by e-mail: *cheryl.gibbs@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. You can view this document in text or PDF at the following site, also: *http://www2.ed.gov/programs/iegpsaorc/applicant.html.*

**Note:** The official version of this document is the document published in the **Federal Register**.

Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 20, 2011.

**Eduardo M. Ochoa,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 2011–1510 Filed 1–24–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), 5 U.S.C. 552a, the Department of Education (Department) publishes this notice of a new system of records entitled "Indian Education—Individual Reporting on Regulatory Compliance Related to the Indian Education Professional Development Program's Service Obligation and the Government Performance and Results Act of 1993 (GPRA)" (18–14–05).

The Indian Education Professional Development program, authorized under title VII, part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), is designed to increase the number of, provide training to, and improve the skills of American Indian or Alaska Natives serving as teachers and school administrators in schools serving American Indian or Alaska Native students.

Section 7122(h) of the ESEA (20 U.S.C. 7442(h)) requires that individuals who receive financial assistance through the Indian Education Professional Development program subsequently complete a service obligation equivalent to the amount of time for which the participant received financial assistance. Participants who do not satisfy the requirements of the regulations must repay all or a pro-rated part of the cost of assistance, in accordance with 20 U.S.C. 7442(h) and 34 CFR 263.8(a)(3). The regulations in part 263 implement requirements governing, among other things, the service obligation and reporting requirements of the participants in the Indian Education Professional Development program, and repayment of financial assistance by these participants. In order for the Federal Government to ensure that the goals of the program are achieved, certain data collection, recordkeeping, and documentation are necessary.

In addition, GPRA requires Federal agencies to establish performance measures for all programs, and the Department has established performance measures for the Indian Education Professional Development program. Data collection from participants who have received financial assistance under the Indian

Education Professional Development program is a necessary element of the Department's effort to evaluate progress on these measures.

The Department tracks participants who are receiving or have previously received support through the Indian Education Professional Development program. Participants must sign a payback agreement that includes contact information. Additionally, the Department receives information about participants from institutions of higher education (IHEs) and other eligible grantees when participants are no longer receiving assistance through the Indian Education Professional Development program. When the performance period is complete, the participant data are collected from the grantee and also from the participants.

Records in the system pursuant to this notice may include the name, social security number, date of birth, mailing address, telephone number, e-mail address, and alternate contact information for each participant in the grant, as well as the name and contact information of a person through whom the participant can be contacted, the number of semesters or months for which the participant needs to provide service in order to satisfy the service payback obligation, the total amount of financial assistance the participant received, the time period during which the participant must satisfy the service payback obligation, eligible employment to fulfill the service payback obligation, contact information for employers, and grant identification numbers. In addition, participants may request an educational deferment, which requires verification of acceptance in a university/college program, enrollment as a full-time student, registration each semester, timely submission of semester transcripts, and documentation of the participant as a student in good standing. Participants also provide information about specific areas of training, certifications or licensures obtained, reasons for leaving the program before completion, gender, ethnic origin, and education history. Participants are responsible for obtaining letters signed by the participant's supervisor that verify the employment information provided by the participant. These letters must be submitted to the Department every six months until service payback is completed.

**DATES:** The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records described in this notice on or before February 24, 2011.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 10, 2011. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on February 22, 2011 unless OMB waives 10 days of the 40-day review period for compelling reasons shown by the Department, or (2) February 24, 2011, unless the system of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about the proposed routine uses to Lana Shaughnessy, Office of Indian Education, U.S. Department of Education, 400 Maryland Ave., SW., room 3E231, Washington, DC 20202–2600. Telephone: (202) 205–2528. If you prefer to send comments through the Internet, use the following address: *oese@ed.gov*.

You must include the term "Indian Education Professional Development Program's Service Obligation" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice at the Department in room 4154, 550 12th Street, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Lana Shaughnessy, Office of Indian Education, U.S. Department of Education. Telephone: (202) 205–2528. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:**

*Introduction:*

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in 34 CFR Part 5(b).

The Privacy Act applies to information about individuals that contains individually identifying information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to submit reports to the OMB whenever the agency publishes a new system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following Web site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the CFR is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 10, 2011.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

For the reasons discussed in the preamble, the Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education (Department), publishes a notice of a new system of records to read as follows:

**18–14–05**

**SYSTEM NAME:**

Indian Education—Individual Reporting on Regulatory Compliance Related to the Indian Education Professional Development program's Service Obligation and the Government Performance and Results Act of 1993 (GPRA).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of Indian Education, U.S. Department of Education, 400 Maryland Ave., SW., Washington, DC 20202–2600.

Records referred to the Department's Accounts Receivable Group will also be stored in a system located in the office of the Chief Financial Officer, Financial Management Operations, Accounts Receivable Group, U.S. Department of Education, 550 12th Street, SW., Washington, DC 20202.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system contains records on individuals who are recipients of financial assistance from grants awarded to eligible entities by the Indian Education Professional Development program (CFDA 84.299B).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system consists of records pertaining to participants who received financial assistance under the Indian Education Professional Development program. Information in this system will include the name, social security number, date of birth, mailing address, telephone number, e-mail address, and alternate contact information for each participant in the grant, as well as the name and contact information of a person through whom the participant can be contacted, the number of semesters or months for which the participant needs to provide service in order to satisfy the service payback obligation, the total amount of financial assistance the participant received, the time period during which the participant must satisfy the service payback obligation, eligible employment to fulfill the service payback obligation, contact information for employers, and grant identification numbers. In addition, participants may request an educational deferment, which requires verification of acceptance in a university/college program, enrollment as a full time student, registration each semester, timely submission of semester transcripts and documentation of the participant as a student in good standing. Participants also provide information about specific areas of training, certifications or licensures obtained, reasons for leaving the program before completion, gender, ethnic origin, and education history. Participants are responsible for obtaining letters signed by the participant's supervisor that verify the employment information provided by the participant. These letters must be submitted to the Department every six months until the required service payback obligation is completed.

Social security numbers are collected in order to ensure the correct identity of the participant in the event fiscal payback is required.

This system of records does not cover records maintained in the Department's system of records entitled "Education's Central Automated Processing System (EDCAPS)" (18–03–02) as part of the Department's receivables management function.

**AUTHORITY FOR MAINTENANCE 0F THE SYSTEM:**

This system of records is authorized under sections 7121 through 7122 of the ESEA (20 U.S.C. 7441–7442).

**PURPOSE(S):**

The information in this system is used for the following purposes: To track a participant's enrollment, employment, fulfillment of the terms of the service obligation; to evaluate progress on the performance measures for the Indian Education Professional Development program (CFDA 84.299B); and to collect debts owed to the Government under this program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988, under a computer matching agreement.

(1) *Program Purposes.* The Department may disclose records from this system of records:

(a) To the participant's employers to verify the eligible employment of participants who were supported with financial assistance under the Indian Education Professional Development program and who are attempting to fulfill their service payback obligation.

(b) To grantees to inform them of their participants' employment outcomes.

(2) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when: (a) It suspects or has confirmed that the security or confidentiality of information in this system has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or by another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(3) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(4) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(5) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statutory, regulatory, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(6) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee.

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear, to an individual, or to an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to parties, counsel, representatives, or witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(7) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under FOIA or the Privacy Act.

(8) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the program covered by this system.

(9) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry. Records are disclosed to congressional members and staff investigating and seeking to resolve individuals' requests, complaints, or concerns.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Disclosure To Consumer Reporting Agencies.* Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a valid, overdue claim of the Department; such information is limited to—(1) the name, address, social security number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 31 U.S.C. 3701(a)(3).

(12) *Debt Servicing.* The Department may disclose records to the United States Department of the Treasury for the purpose of collecting debts owed to the Government by individuals who fail to satisfy their requirements under this program.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The Department maintains hard copy records in locked file cabinets that are located within locked offices protected by a security system.

The Department will maintain records referred to Accounts Receivable in the Education Central Automated Processing System of Records (EDCAPS).

**RETRIEVABILITY:**

Records in this system are indexed by a number assigned to each individual. Records are retrieved by name or grant number.

**SAFEGUARDS:**

All physical access to the Department's site, where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

In accordance with Department policy, as set forth in Administrative Communication System OM:5–101 entitled "Contractor Employee Personnel Security Screenings," all contract personnel who have facility access and system access are required to undergo a security clearance investigation. Contractors requiring access to Privacy Act data are required to hold, at a minimum, a moderate risk security clearance level.

Department personnel and Department contractors are also required to complete security awareness training on an annual basis. This training is required to ensure that contract and Department users are trained appropriately in safeguarding Privacy Act data in accordance with OMB Circular A–130, Appendix III.

The Department will maintain security of the complete set of all master data files and documentation. Access to individually identifying data will be strictly controlled. Unless a file is needed for review or processing, all hard copy data will be kept in locked file cabinets during work and nonworking hours. When a file is needed, work will take place in a single room. The system is required to ensure that information identifying individuals is in files physically separated from other data.

**RETENTION AND DISPOSAL:**

These records will be maintained and disposed of in accordance with the records retention and disposition authority approved by the National Archives and Records Administration (NARA). Pending NARA approval of that authority, these records shall not be destroyed or deleted. Records will be kept until completion of service or cash payback is verified.

**SYSTEM MANAGER AND ADDRESS:**

Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., SW., room 3W315, Washington, DC 20202–2600.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager at the address listed under **SYSTEM MANAGER AND ADDRESS**. Your request must meet the requirements of 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURE:**

If you wish to gain access to your record in the system of records, contact the system manager at the address listed under **SYSTEM MANAGER AND ADDRESS**. Your request must meet the requirements of 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURE:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager at the address listed under **SYSTEM MANAGER AND ADDRESS**. Your request must meet the requirements of 34 CFR 5b.7, including proof of identity.

**RECORD SOURCE CATEGORIES:**

The collection of records information is obtained from the grantee, participants, and employers.

When the Department determines a participant will not fulfill a payback obligation through service and must instead repay some or all of the financial assistance the participant received, the Department will forward information to the Department's Accounts Receivable Group in the Office of the Chief Financial Officer (OCFO).

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2011–1516 Filed 1–24–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Research and Development Strategies for Compressed & Cryo-Compressed Hydrogen Storage Workshops

**AGENCY:** Fuel Cell Technologies Program, Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of meeting.

**SUMMARY:** The Systems Integration group of the National Renewable Energy Laboratory, in conjunction with the Hydrogen Storage team of the EERE Fuel Cell Technologies Program, will be hosting two days of workshops on compressed and cryo-compressed hydrogen storage in the Washington, DC metro area.

**DATES:** The workshops will be held on Monday, February 14, 2011 and Tuesday, February 15, 2011 from 8:30 a.m. to approximately 5 p.m. each day.

**ADDRESSES:** Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. Any individual who wishes to attend the workshop must send reservation notice via e-mail to *CH2WorkShop@ee.doe.gov* by close of business Monday, January 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Josh Gesick, Senior Systems Engineer, National Renewable Energy Laboratory, MS RSF301, 1617 Cole Boulevard, Golden, CO 80401; Dr. Ned Stetson, Technology Development Manager, Fuel Cell Technology Program, EE–2H, 1000 Independence Ave., SE., Washington, DC 20585, (202) 586–9995. More information on DOE's hydrogen storage program, targets and current research information can be found at *http://www1.eere.energy.gov/hydrogenandfuelcells/storage/.*

**SUPPLEMENTARY INFORMATION:** These workshops are open to the public, however space is limited and RSVP is required (*see* **ADDRESSES** above). The format of the workshop is intended to be interactive with short introductory presentations followed by extensive discussions among the attendees. Numerous breakout sessions are scheduled for both days. The detailed agenda is available online at *http://www1.eere.energy.gov/hydrogenandfuelcells/wkshp_compressedcryo.html.*

The purpose of the compressed hydrogen workshop on Monday February 14th will be to identify strategies to lower the cost of high pressure hydrogen storage systems. Discussion will focus on determining research strategies and technical pathways to lower costs while maintaining performance and safety. Introductory presentations include automotive and manufacturing perspectives, and overviews of carbon fiber development and recent costs analyses. The cryo-compressed hydrogen workshop on Tuesday February 15th will focus on identifying the issues associated with performance and reliability of cryogenic hydrogen storage systems, including cryo-compressed and cryo-adsorption systems. The objective is to determine and prioritize the research needs and technical pathways for each approach while highlighting those aspects which should be common to both system types as well as identifying the unique requirements and issues that should be addressed. Introductory presentations will include perspectives from automotive and other potential users of the technology and overviews on hydrogen sorption technology and recent analyses and progress on cryo-compressed and cryo-sorption technology.

Dated: January 11, 2011.

**Sunita Satyapal,**

*Program Manager, Fuel Cell Technologies.*

[FR Doc. 2011–1499 Filed 1–24–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

January 18, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER96–719–028; ER97–2801–030; ER99–2156–021; ER07–1236–005.

*Applicants:* MidAmerican Energy Company; PacifiCorp; Cordova Energy Company LLC; Yuma Cogeneration Associates.

*Description:* Supplement to Triennial Market Power Update of PacifiCorp, *et al.*

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5172.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER98–411–018.

*Applicants:* Wolverine Power Supply Cooperative, Inc.

*Description:* Notification of Change in Status of Wolverine Power Supply Cooperative, Inc.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5142.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER01–1822–008.

*Applicants:* Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP.

*Description:* Report change in status of DGC Companies.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5258.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER10–1556–002.

*Applicants:* Longview Power.

*Description:* Notice of Change in Status of Longview Power, LLC.

*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5240.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER10–2924–001.
*Applicants:* Kleen Energy Systems, LLC.
*Description:* Kleen Energy Systems, LLC submits tariff filing per 35: Kleen Energy MBR ETariff to be effective 9/24/2010.
*Filed Date:* 01/13/2011.
*Accession Number:* 20110113–5153.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER10–2989–002.
*Applicants:* Solios Power Trading LLC.
*Description:* Solios Power Trading LLC submits tariff filing per 35: Solios Power Trading ETariff to be effective 9/27/2010.
*Filed Date:* 01/13/2011.
*Accession Number:* 20110113–5157.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER10–2991–002.
*Applicants:* Solios Power Mid-Atlantic Trading, LLC.
*Description:* Solios Power Mid-Atlantic Trading, LLC submits tariff filing per 35: Solios Power Mid-Atlantic MBR Tariff to be effective 9/27/2010.
*Filed Date:* 01/13/2011.
*Accession Number:* 20110113–5156.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER10–2993–002.
*Applicants:* Solios Power Midwest Trading LLC.
*Description:* Solios Power Midwest Trading LLC submits tariff filing per 35: Solios Power Midwest ETariff to be effective 9/27/2010.
*Filed Date:* 01/13/2011.
*Accession Number:* 20110113–5160.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER10–3013–001.
*Applicants:* Star Point Wind Project LLC.
*Description:* Star Point Wind Project LLC submits tariff filing per 35: Compliance Filing to Baseline MBR Tariff to be effective 9/27/2010.
*Filed Date:* 12/14/2010.
*Accession Number:* 20101214–5151.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER10–3260–001.
*Applicants:* Granite Ridge Energy, LLC.
*Description:* Granite Ridge Energy, LLC submits tariff filing per 35: Compliance Filing to be effective 9/30/2010.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5217.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER10–3299–001.
*Applicants:* New Athens Generating Company, LLC.
*Description:* New Athens Generating Company, LLC submits tariff filing per 35: Compliance Filing to be effective 9/30/2010.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5076.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER10–3286–002.
*Applicants:* Millennium Power Partners, L.P.
*Description:* Millennium Power Partners, L.P. submits tariff filing per 35: Compliance Filing to be effective 9/30/2010.
*Filed Date:* 01/13/2011.
*Accession Number:* 20110113–5099.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER10–3310–001.
*Applicants:* New Harquahala Generating Company, LLC.
*Description:* New Harquahala Generating Company, LLC submits tariff filing per 35: Compliance Filing to be effective 9/30/2010.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5091.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–40–003.
*Applicants:* Arizona Public Service Company.
*Description:* Arizona Public Service Company submits tariff filing per 35: Rate Schedule No. 217 Compliance Filing to be effective 10/6/2010.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5166.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–1828–002.
*Applicants:* Maine Public Service Company.
*Description:* Maine Public Service Company submits tariff filing per 35: Compliance to Interconnection Agreement Filing in ER11–1828 to be effective 9/29/2010.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5143.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–1952–001.
*Applicants:* Southern California Edison Company.
*Description:* Southern California Edison Company submits tariff filing per 35: 2011 CWIP Update Compliance Filing to be effective 1/1/2011.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5209.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–1975–001.
*Applicants:* New York Independent System Operator, Inc.
*Description:* New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Filing—Resubmittal of Record for Correct Display in eTariff to be effective 10/15/2010.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5054.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2062–001.
*Applicants:* Energy Plus Holdings LLC.
*Description:* Energy Plus Holdings LLC submits tariff filing per 35: Baseline 714 compliance to be effective 1/11/2011.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5034.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2120–001.
*Applicants:* Arizona Public Service Company.
*Description:* Arizona Public Service Company submits tariff filing per 35: Compliance Filing of Rate Schedule No. 217 to be effective 11/12/2010.
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5189.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2153–001.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits tariff filing per 35.17(b): BPA Cooperative Communications Agreement Amended Filing to be effective 10/1/2010.
*Filed Date:* 01/12/2011.
*Accession Number:* 20110112–5090.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 02, 2011.

*Docket Numbers:* ER11–2195–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): R23 Amendment (2) to be effective 11/30/2010.
*Filed Date:* 01/12/2011.
*Accession Number:* 20110112–5059.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 02, 2011.

*Docket Numbers:* ER11–2334–007.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): Part 8, ATC Succession (2) to be effective 2/9/2011.

*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5063.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2359–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): CapX-Bemidji-Otter Tail Amendment to be effective 12/15/2010.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5156.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2360–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): CapX-Bemidji-Minnkota Power Amendment to be effective 12/15/2010.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5157.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2361–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): CapX-Bemidji-MN Power Amendment to be effective 12/15/2010.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5184.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2421–001.
*Applicants:* Public Service Company of New Hampshire.
*Description:* Public Service Company of New Hampshire submits tariff filing per 35.17(b): Errata PSNH and Pinetree IA–PSNH–01 IA to be effective 1/1/2011.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5045.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2517–001.
*Applicants:* South Carolina Electric & Gas Transmission.
*Description:* South Carolina Electric & Gas Transmission submits tariff filing per 35: Compliance filing for Section 4.2 OASIS to be effective 1/13/2011.
*Filed Date:* 01/13/2011.
*Accession Number:* 20110113–5030.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER10–2531–002.
*Applicants:* Cedar Creek Wind Energy, LLC.
*Description:* Cedar Creek Wind Energy, LLC's Notice of Non-Material Change in Status.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5236.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2675–000.
*Applicants:* Windhorse Energy, LLC.
*Description:* Windhorse Energy, LLC submits notice of cancellation of its FERC Electric Tariff, Original Volume 1 *etc.*
*Filed Date:* 01/12/2011.
*Accession Number:* 20110113–0201.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 02, 2011.

*Docket Numbers:* ER11–2676–000.
*Applicants:* Windhorse Energy, Inc.
*Description:* Windhorse Energy, Inc submits a notice of cancellation.
*Filed Date:* 01/12/2011.
*Accession Number:* 20110113–0202.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 02, 2011.

*Docket Numbers:* ER11–2691–000.
*Applicants:* Pilot Power Group, Inc.
*Description:* Pilot Power Group, Inc. submits tariff filing per 35.1: PPG Tariff to be effective 1/17/2011.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5042.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2692–000.
*Applicants:* ASC Energy Services, Inc.
*Description:* ASC Energy Services, Inc. submits tariff filing per 35.12: Market-Based Rate Initial Tariff Baseline to be effective 3/20/2011.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5132.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2693–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: J102 GIA filing to be effective 1/19/2011.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5133.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2695–000.
*Applicants:* Wisconsin Power and Light Company.
*Description:* Wisconsin Power and Light Company submits tariff filing per 35.13(a)(2)(iii: WPL Changes in Depreciation Rates for Wholesale Production Service to be effective 3/31/2011.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5155.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

Take notice that the Commission received the following land acquisition reports:

*Docket Numbers:* LA10–4–000.
*Applicants:* Indigo Generation LLC, Larkspur Energy LLC; Wildflower Energy LP.
*Description:* Report of Indigo Generation LLC, *et al.*
*Filed Date:* 01/14/2011.
*Accession Number:* 20110114–5259.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH11–11–000.
*Applicants:* New Jersey Resources Corporation.
*Description:* Notice of Material Change in Facts and FERC–65A Exemption Notification of New Jersey Resources Corporation.
*Filed Date:* 01/18/2011.
*Accession Number:* 20110118–5228.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the

appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–1491 Filed 1–24–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

January 18, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG11–46–000.

*Applicants:* Grande Prairie Generation, Inc.

*Description:* Self-Certification of EWG Status of Grande Prairie Generation, Inc.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5102.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER98–411–018.

*Applicants:* Wolverine Power Supply Cooperative, Inc.

*Description:* Notification of Change in Status of Wolverine Power Supply Cooperative, Inc.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5142.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER03–534–012.

*Applicants:* Ingenco Wholesale Power, L.L.C.

*Description:* Notice of Change in Status of Ingenco Wholesale Power, L.L.C.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5236.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER06–1399–010.

*Applicants:* Sunbury Generation LP.

*Description:* Notice of Non-Material Change in Status of Sunbury Generation LP.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5113.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER10–2068–005.

*Applicants:* Delaware City Refining Company LLC.

*Description:* Supplemental Information/Change-in-Status Notification of Delaware City Refining Company LLC.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5161.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER10–2077–004.

*Applicants:* PBF Power Marketing LLC.

*Description:* Supplemental Information/Request Change-in-Status Notification of PBF Power Marketing LLC.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5162.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER11–2010–003.

*Applicants:* Exelon Wind 4, LLC.

*Description:* Exelon Wind 4, LLC submits tariff filing per 35: ReFile to be effective 12/17/2010.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5000.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER11–2679–000.

*Applicants:* Florida Power Corporation.

*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Revised Rate Schedule No. 80 of Florida Power Corporation to be effective 1/1/2011.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5094.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER11–2680–000.

*Applicants:* Liberty Electric Power, LLC.

*Description:* Liberty Electric Power, LLC submits tariff filing per 35.15: Cancellation to be effective 1/13/2011.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5101.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

*Docket Numbers:* ER11–2681–000.

*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.

*Description:* ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Removal of Sunsetted Provisions in App. A to Market Rule 1 and Conf. Chges. to be effective 3/16/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5041.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2682–000.

*Applicants:* Delmarva Power & Light Company.

*Description:* Notice of Cancellation of Mutual Operating Agreement of Delmarva Power & Light Company.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5053.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2683–000.

*Applicants:* Alabama Power Company.

*Description:* Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: PowerSouth NITSA Amendment Filing to be effective 11/1/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5069.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2684–000.

*Applicants:* Palmco Power NY, LLC.

*Description:* Palmco Power NY, LLC submits tariff filing per 35.12: Palmco Power NY FERC Electric Tariff Original Volume No. 1 to be effective 1/14/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5070.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2685–000.

*Applicants:* New Athens Generating Company, LLC.

*Description:* New Athens Generating Company, LLC submits tariff filing per 35.15: Cancellation to be effective 1/14/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5071.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2686–000.

*Applicants:* ISO New England Inc., New England Power Pool Participants Comm.

*Description:* ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Amend Participants Agreement among ISO–NE, NEPOOL and Individual Participants to be effective 1/15/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5137.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2687–000.

*Applicants:* PJM Interconnection, L.L.C., Delmarva Power & Light Company.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: IMOA between Delmarva and Town of Middletown, Delaware, Service Agmt No. 2718 to be effective 3/15/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5138.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2688–000.

*Applicants:* PSEG Energy Resources & Trade LLC.

*Description:* PSEG Energy Resources & Trade LLC submits tariff filing per 35.13(a)(2)(iii: Proposed Revision to Section III to Extend Term to be effective 3/11/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5144.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2689–000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits tariff filing per 35.13(a)(2)(iii: PAC Energy NITSA Rev 7 to be effective 12/30/2010.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5145.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2690–000.

*Applicants:* Tampa Electric Company.

*Description:* Tampa Electric Company submits tariff filing per 35.13(a)(2)(iii: Rate Schedule No. 6 With Florida Power Corporation to be effective 1/1/2011.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5168.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

*Docket Numbers:* ER11–2694–000.

*Applicants:* Southern California Edison Company.

*Description:* Request for Waiver of Southern California Edison Company under ER11–2694.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5252.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES09–28–002.

*Applicants:* Entergy Mississippi, Inc.

*Description:* Application of Entergy Mississippi, Inc., to Amend Existing FPA ? 204 Authorization.

*Filed Date:* 01/14/2011.

*Accession Number:* 20110114–5253.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 04, 2011.

Take notice that the Commission received the following foreign utility company status filings:

*Docket Numbers:* FC11–4–000.

*Applicants:* Grande Prairie Generation, Inc.

*Description:* Self-Certification of FUCO Status of Grande Prairie Generation, Inc.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5103.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 03, 2011.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

*Docket Numbers:* QM10–6–000.

*Applicants:* Commonwealth Edison Company.

*Description:* Commonwealth Edison Compliance Filing—Revised Appendix 1 under QM10–6.

*Filed Date:* 01/13/2011.

*Accession Number:* 20110113–5140.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 10, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–1492 Filed 1–24–11; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9256–8]**

### Adequacy Status of the Houston-Galveston-Brazoria, Texas Reasonable Further Progress and Attainment Demonstration 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy determination.

**SUMMARY:** EPA is notifying the public that it has found that the motor vehicle emissions budgets (MVEBs) in the Houston-Galveston-Brazoria, Texas (HGB) Reasonable Further Progress (RFP) and Attainment Demonstration State Implementation Plan (SIP) revisions, submitted on April 1st and April 6th, 2010 respectively, by the Texas Commission on Environmental Quality (TCEQ) are adequate for transportation conformity purposes. As a result of EPA's finding, the HGB area must use these budgets for future conformity determinations for the 1997 8-hour ozone standard.

**DATES:** These budgets are effective February 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/*

*stateresources/transconf/adequacy.htm.* You may also contact Mr. Jeffrey Riley, Air Planning Section (6PD–L), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8542, E-mail address: *Riley.Jeffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refers to EPA. The word "budget(s)" refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides ($NO_X$).

On April 1st and April 6th, 2010, we received State Implementation Plan (SIP) revisions from the Texas Commission on Environmental Quality (TCEQ). These revisions consisted of a Reasonable Further Progress (RFP) SIP and an Attainment Demonstration SIP for the Houston-Galveston-Brazoria (HGB) ozone nonattainment area. These submissions established motor vehicle emissions budgets (MVEB) for the HGB area for the years 2008, 2011, 2014, 2017 and 2018. The MVEB is the amount of emissions allowed in the state implementation plan for on-road motor vehicles; it establishes an emissions ceiling for the regional transportation network. The MVEBs are provided in Tables 1 and 2:

TABLE 1—HOUSTON-GALVESTON-BRAZORIA REASONABLE FURTHER PROGRESS (RFP) $NO_X$ AND VOC MVEBS

[Summer season tons per day]

| | 2008 | 2011 | 2014 | 2017 | 2018 |
|---|---|---|---|---|---|
| $NO_X$ | 193.39 | 135.74 | 95.26 | 67.95 | 60.92 |
| VOC | 94.75 | 75.17 | 61.84 | 53.23 | 51.35 |

TABLE 2—HOUSTON-GALVESTON-BRAZORIA ATTAINMENT DEMONSTRATION $NO_X$ AND VOC MVEB

[Summer season tons per day]

| | 2018 |
|---|---|
| $NO_X$ | 49.22 |
| VOC | 45.97 |

On June 24, 2010, EPA posted the availability of the HGB area budgets on EPA's Web site, as part of the adequacy process, for the purpose of soliciting public comments. The comment period closed on July 26, 2010, and we received no comments.

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 6 sent a letter to TCEQ on October 8, 2010, finding that the MVEBs in the HGB RFP and Attainment Demonstration SIPs, submitted on April 1st and April 6th, 2010 respectively, are adequate and must be used for transportation conformity determinations in the HGB area. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 Code of Federal Regulations (CFR) part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, "Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the HGB RFP SIP and Attainment Demonstration SIP revision submittals. Even if EPA finds the budgets adequate, these submittals could later be disapproved.

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new MVEBs if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See, 73 FR 4419 (January 24, 2008).

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 13, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2011–1470 Filed 1–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OARM–2010–0989; FRL–9256–4; EPA ICR No. 1550.07; OMB Control No. 2030–023]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Contractor Conflicts of Interest

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before March 28, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2010–0989 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ramrakha.staci@epa.gov.*
- *Fax:* (202) 566–1753.
- *Mail:* EPA–HQ–OARM–2010–0989, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three (3) copies.
- *Hand Delivery:* EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave., NW.,

Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OARM–2010–0989.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Staci Ramrakha, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; telephone number: (202) 564–2017; e-mail address: *ramrakha.staci@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**How can I access the docket and/or submit comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2010–0989, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

**What information is EPA particularly interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What should I consider when I prepare my comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What information collection activity or ICR does this apply to?**

Docket ID No. EPA–HQ–OARM–2010–0989.

*Affected entities:* Entities potentially affected by this action are businesses or organizations performing contracts for the EPA.

*Title:* Conflict of Interest, Rule # 1.

*ICR numbers:* EPA ICR No. 1550.07, OMB Control No. 2030–023.

*ICR status:* This ICR is currently scheduled to expire on May 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* EPA contractors will be required to disclose business relationships and corporate affiliations to determine whether EPA's interests are jeopardized by such relationships. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, it is imperative that contractors are free from conflicts of interest so as not to prejudice response and enforcement actions. Contractors will be required to maintain a database of business relationships and report information to EPA on either an annual basis or when each work order is issued.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,138 hours per response. Burden means the total time,

effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here. The EPA estimates a total of 135 respondents, 10 new and 125 existing. The estimated total annual burden hours are 153,626 for 135 responses for an average burden of 1,821 per respondent.

Estimated total annual costs are $10,978,201.08. This includes an estimated contractor burden cost of $9,858,202.20 and an estimated Agency burden cost of $1,119,998.88. These amounts were calculated using the hours above and the labor rates from the 2009 Bureau of Labor National Mean Statistics and the General Schedule. Specific calculations are included in the ICR. Because it will not be necessary for respondents to acquire any capital goods to provide the requested information, EPA has estimated no incurred capital/start-up costs.

**Are there changes in the estimates from the last approval?**

There is no change in the hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

**What is the next step in the process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 18, 2011.

**John R. Bashista,**

*Director, Office of Acquisition Management.*

[FR Doc. 2011–1476 Filed 1–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9257–2]**

## A Method To Assess Climate-Relevant Decisions: Application in the Chesapeake Bay

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Peer Review Workshop.

**SUMMARY:** EPA is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review workshop to review the external review draft document titled, "A Method to Assess Climate-Relevant Decisions: Application in the Chesapeake Bay" (EPA/600/R–10/096a). The draft document was prepared by EPA's National Center for Environmental Assessment (NCEA), which is situated in the Office of Research and Development.

EPA will forward public comments that were submitted in accordance with a previous notice (**Federal Register** Volume 75, Number 168 [Tuesday, August 31, 2010]) to the external peer-review panel for consideration prior to the meeting. When finalizing the draft document, EPA will consider any public comments that EPA received in accordance with the August 31, 2010 **Federal Register** Notice.

EPA released this draft document solely for the purpose of peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

EPA invites the public to register and attend this workshop and to give oral and/or provide written comments of the draft document under review. The draft document and EPA's peer review charge are available via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* In preparing a final report, EPA will consider the comments and recommendations from the external peer review workshop and any public comments received in accordance with this notice.

**DATES:** The peer review panel workshop will begin on Friday, March 11, 2011, at 8:30 a.m. and end at 4 p.m.

**ADDRESSES:** The peer review workshop will be held at The Navy League Building, 2300 Wilson Boulevard, Arlington, VA 22201. The EPA contractor, ERG, is organizing, convening, and conducting the peer review workshop. To attend the workshop, register by Friday, March 4, 2011 by calling ERG at 781–674–7374 or toll free at 800–803–2833 (ask for the Chesapeake Bay peer review coordinator, Laurie Waite), sending a facsimile to 781–674–2906 (*please reference:* "Chesapeake Bay peer review workshop" and include your name, title, affiliation, full address, and contact information, and whether you wish to make oral comments), or sending an e-mail to *meetings@erg.com* (*subject line:* "Chesapeake Bay peer review workshop" and include your name, title, affiliation, full address, and contact information, and whether you wish to make oral comments). You may also register via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-chesapeake.htm*. The draft "A Method to Assess Climate-Relevant Decisions: Application in the Chesapeake Bay" is available via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (IMT), NCEA; *telephone:* 703–347–8561; *facsimile:* 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, "A Method to Assess Climate-Relevant Decisions: Application in the Chesapeake Bay." Copies are not available from ERG.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer review workshop should be directed to ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136; *telephone:* 781–674–7374; *facsimile:* 781–674–2906; or *e-mail: meetings@erg.com* (*subject line:* Chesapeake Bay peer review workshop), preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

If you need technical information about the document, please contact Susan Julius, National Center for Environmental Assessment (NCEA); *telephone:* 703–347–8619; *facsimile:* 703–347–8694; e-mail *Julius.susan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Summary of Information About the Project/Document**

Climate change is a global phenomenon that affects natural and human systems in all parts of the world. The goal of this study was to develop a way to inventory and analyze management decisions to provide information to effectively adapt to climate change. This report will be useful to officials who make environmental management decisions related to the Chesapeake Bay.

The major steps of the approach used in this pilot study of the Chesapeake Bay Program were to: (1) Select a study area and compile a list of key decisions; (2) develop criteria for evaluating the climate-relevance of decisions; (3) apply the criteria to select decisions that are potentially sensitive to climate change; (4) solicit expert judgment regarding the decisions selected; and (5) test alternative prioritization schemes.

**II. Workshop Information**

Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public in the afternoon. Please let ERG know if you wish to make comments during the workshop. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: January 19, 2011.

**Joseph A. DeSantis,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 2011–1468 Filed 1–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9256–7]**

## Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board Clean Air Scientific Advisory Committee, Air Monitoring and Methods Subcommittee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the SAB Clean Air Scientific Advisory Committee (CASAC) Air Monitoring and Methods Subcommittee (AMMS) to conduct a review of EPA's draft monitoring documents for Oxides of Nitrogen ($NO_X$) and Sulfur ($SO_X$).

**DATES:** The meeting will be held on February 16, 2011 from 10:30 a.m. to 5:30 p.m. (Eastern Time).

**ADDRESSES:** The Committee meeting will be held at the Carolina Inn, 211 Pittsboro Street, Chapel Hill, NC 27516.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2134; by fax at (202) 565–2098 or via e-mail at *hanlon.edward@epa.gov.* General information concerning the EPA CASAC can be found at the EPA CASAC Web site at *http://www.epa.gov/casac.* Any inquiry regarding EPA's draft monitoring documents for $NO_X$ and $SO_X$ should be directed to Mr. Richard Scheffe, EPA Office of Air Quality Planning and Standards (OAQPS) at *scheffe.rich@epa.gov* or 919–541–4650.

**SUPPLEMENTARY INFORMATION:**

*Background:* Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the SAB CASAC AMMS will hold a public meeting to evaluate and comment on EPA's draft monitoring documents for $NO_X$ and $SO_X$. The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal Advisory Committee chartered under FACA. The CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Section 109(d)(1) of the Clean Air Act requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the National Ambient Air Quality Standard (NAAQS) for the six "criteria" air pollutants. EPA's Office of Air Quality Planning and Standards (OAQPS) has requested independent review and CASAC advice regarding EPA's draft monitoring documents for $NO_X$ and $SO_X$ and proposed methods for assessing levels of nitrogen and sulfur deposition.

The SAB Staff Office previously announced (75 FR 64726–64727, October 20, 2010) it was forming a new Subcommittee of the CASAC to provide independent expert advice on air pollution monitoring and methods issues through the chartered CASAC. At the February 16, 2011 meeting, the CASAC AMMS will evaluate and comment on EPA's draft monitoring documents for $NO_X$ and $SO_X$.

*Availability of Meeting Materials:* The agenda and EPA's draft monitoring documents for $NO_X$ and $SO_X$ will be available on the CASAC Web site at *http://www.epa.gov/casac* in advance of the meeting.

Interested members of the public may submit relevant written or oral information on the topic of this advisory activity for the CASAC to consider during the advisory process.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Mr. Edward Hanlon, DFO, in writing (preferably via e-mail), at the contact information noted above, by February 10, 2011 to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by February 10, 2011 so that the information may be made available to the CASAC AMMS for their consideration. 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, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two 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 Mr. Edward Hanlon 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: January 19, 2011.

**Anthony F. Maciorowski,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2011–1472 Filed 1–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R09–OAR–2011–0024; FRL–9256–9]**

### Notice of Re-Issuance of the Prevention of Significant Deterioration Applicability Determination for the Carlsbad Energy Center Project, Carlsbad, CA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action.

**SUMMARY:** This notice announces that on January 10, 2011, the EPA issued a determination that the proposal to modify the Encina Power Station is not subject to the Prevention of Significant Deterioration (PSD) permit program under the Clean Air Act (CAA). This determination corrects a typographical error in the emission data in our previous determination issued on October 13, 2010. Therefore, the determination issued on January 10, 2011 replaces the one EPA issued on October 13, 2010.

**ADDRESSES:** EPA's determination and other related documents used in the determination are available electronically on EPA's Web site at *http://www.epa.gov/region9/air/permit/r9-permits-issued.html.* These documents are also available for public inspection during normal business hours at the following address: EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. For more information or to arrange viewing of these documents, contact Shaheerah Kelly at (415) 947–4156 or *kelly.shaheerah@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Shaheerah Kelly, EPA Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4156, *kelly.shaheerah@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The Carlsbad Energy Center Project is a proposed 540 MW net (558 MW gross) combined cycle natural gas-fired power plant that will be built at the existing Encina Power Station in the city of Carlsbad in San Diego County, California. The Carlsbad Energy Center Project will replace three of five existing natural gas-fired boilers located at the eastern end of the property site at the Encina Power Station. The Encina Power Station is owned by NRG Energy, Inc. (NRG), and currently has a total of five natural gas-fired boilers, which are allowed to use No. 6 fuel oil during curtailments, and three fuel oil storage tanks. The Encina Power Station is an existing major source, and the addition of the Carlsbad Energy Center Project would be a physical change to the facility.

EPA Region 9 has authority to implement the Clean Air Act Prevention of Significant Deterioration Program at 40 CFR 52.21 for San Diego County, California. Because the Carlsbad Energy Center Project is a physical change to an existing major stationary source, EPA Region 9 evaluated whether the physical change is a major modification by determining whether the physical change will result in a net emission increase for pollutants regulated under the PSD permit program. We received emissions information from NRG on June 5, 2009, as well as additional information since that time. This emissions information addressed the following criteria pollutants associated with the modification: nitrogen oxides, carbon monoxide, particulates, volatile organic compounds, and sulfur oxides. On October 13, 2010, we issued a determination that the Carlsbad Energy Center Project is not subject to the PSD permit program under the Clean Air Act (CAA). EPA published a **Federal Register** notice for this action on November 19, 2010 (75 FR 70916–70917).

It has recently come to EPA's attention that Table 2 of the October 13, 2010 determination contained a typographical error in the emissions data. Specifically, EPA changed the net emission increase for nitrogen oxides (NOx) in Table 2 of the PSD applicability analysis from 39.2 tpy (which is incorrect) to 31.2 tpy. The new emission level is still below the PSD significant threshold for that pollutant. EPA made this correction and issued a corrected determination on January 10, 2011. No other changes to the previous determination were made. Therefore, the determination issued on January 10, 2011 replaces the one issued on October 13, 2010.

If available, judicial review of EPA's determination may be sought by filing a petition for review pursuant to section 307(b)(1) of the CAA in the United States Court of Appeals for the Ninth Circuit within 60 days from the date on which this notice is published in the **Federal Register**.

Dated: January 13, 2011.

**Deborah Jordan,**

*Director, Air Division, Region 9.*

[FR Doc. 2011–1469 Filed 1–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Agency Information Collection Activities: Existing Collection; Emergency Extension

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of Information Collection—Emergency Extension Without Change: State and Local Government Information Report (EEO–4).

**SUMMARY:** In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a three-year extension of the State and Local Government Information Report (EEO–4), to be effective after the current January 31, 2011 expiration date.

**FOR FURTHER INFORMATION CONTACT:** Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

**SUPPLEMENTARY INFORMATION:** The EEOC has collected information from state and local governments with 100 or more full-time employees since 1974 (biennially in odd-numbered years since 1993).

**Overview of Information Collection**

*Collection Title:* State and Local Government Information Report (EEO–4).

*OMB—Number:* 3046–0008.

*Frequency of Report:* Biennial.

*Type of Respondent:* State and local government jurisdictions with 100 or more Employees.

*Description of Affected Public:* State and local governments excluding elementary and secondary public school districts.

*Number of Responses:* 13,456.

*Reporting Hours:* 44,719.

*Cost to Respondents:* $1,045,000.

*Number of Forms:* 1.

*Form Number:* EEOC Form 164.

*Federal Cost:* $187,500.

*Abstract:* Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the

reporting requirements for state and local governments. State and local governments with 100 or more employees have been required to submit EEO–4 reports since 1974 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against state and local governments and to provide information on the employment status of minorities and women. The data are shared with several other federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, U.S.C. 2000e–8(d), as amended, EEO–4 data is shared with state and local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

*Burden Statement:* The estimated number of respondents included in the EEO–4 survey is 9,000 state and local governments. These 9,000 jurisdictions file about 13,456 reports due to the requirement for some to file separate reports by function. The form is estimated to impose 44,719 burden hours biennially.

Dated: December 22, 2010.

For the Commission.

**Jacqueline A. Berrien,**

*Chair.*

[FR Doc. 2011–1456 Filed 1–24–11; 8:45 am]

**BILLING CODE 6570–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices; Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday, January 20, 2011, 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 for December 16, 2010
Proposed Final Audit Report on the Tennessee Democratic Party
Proposed Final Audit Report on the Tennessee Republican Party Federal Election Account
Proposed Final Audit Report on the Washington State Democratic Central Committee
Draft Notice of Proposed Rulemaking on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations
Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley Garr, Deputy Commission Secretary, 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.

**Shelley E. Garr,**

*Deputy Secretary of the Commission.*

[FR Doc. 2011–1163 Filed 1–24–11; 8:45 am]

**BILLING CODE 6715–01–M**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Labor-Management Cooperation Grant Program Information Collection Request

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** 60-Day Notice and Request for Comments.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS), as part of its continuing effort to reduce the paperwork burden of grant applicants and awardees in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. The information collection requests are FMCS forms: Application for Federal Assistance (SF–424), Accounting System and Financial Capability Questionnaire (LM–3), Request for Advance or Reimbursement SF–270 (LM–6), Financial Status Report SF–269a (LM–7), Project Performance (LM–8), and Grants Program Grantee Evaluation Questionnaire (LM–9). This information collection activity was previously approved by the Office of Management and Budget (OMB) and is requesting a reinstatement without change to the collection. This collection was assigned the control number 3076–0006.

**DATES:** Comments on this information collection must be received within 60 days of the **Federal Register** publication date to be assured of consideration.

**ADDRESSES:** Submit written comments by mail to the Labor-Management Cooperation Grants Program, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 or by contacting the person whose name appears under the section headed, **FOR FURTHER INFORMATION CONTACT**. Comments may be submitted by fax at (202) 606–3434 or via e-mail to Linda Gray-Broughton, Grants Specialist at *lgbroughton@fmcs.gov.* All comments must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as "CBI". A copy of the comment that contains CBI will be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by FMCS without prior notice. All written comments will be available for inspection in Suite 800 at the Washington, DC address above from 9 a.m. to 2 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Linda Gray-Broughton, Grants Specialist, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone number (202) 606–8181, e-mail to *lgbroughton@fmcs.gov* or via fax (202) 606–3434.

**SUPPLEMENTARY INFORMATION:** Copies of the complete agency forms are available from the Labor-Management Cooperation Grants Program by calling, faxing, or writing Linda Gray-Broughton at the address above. Please ask for forms by agency number.

**I. Information Collection Requests**

FMCS is seeking comments on the following information collection requests contained in FMCS agency forms.

*Agency:* Federal Mediation and Conciliation Service.

*Form Number:* OMB No. 3076–0006.

*Type of Request:* Reinstatement of a collection without change in the substance or method of collection.

*Affected Entities:* Potential applicants and/or grantees who received our grant application kit. Also applicants who have received a grant from FMCS.

*Frequency:* a. Three of the forms, the SF–424, LM–6, and LM–9 are submitted at the applicant/grantee's discretion.

b. To conduct the quarterly submissions, LM–7and LM–8 forms are used. Less than quarterly reports would deprive FMCS of the opportunity to provide prompt technical assistance to deal with those problems identified in the report.

c. Once per application. The LM–3 is the only form to which a "similar information" requirement could apply. Acceptance of a recent audit report without deficiencies is acceptable.

*Abstract:* Except for the FMCS Forms LM–3 and LM–9, the forms under

consideration herein are either required or recommended in OMB Circulars. The two exceptions are non-recurring forms, the former a questionnaire sent only to non-public sector potential grantees and the latter a questionnaire sent only to former grantees for voluntary completion and submission.

The collected information is used by FMCS to determine annual applicant suitability, to monitor quarterly grant project status, and for on-going program evaluation. If the information were not collected, there could be no accounting for the activities of the program. Actual use has been the same as intended use.

*Burden:* The Application for Federal Assistance (SF–424) is an OMB form with no agency additions. The estimated average time burden per respondent: 30 minutes. Estimated average number of responses: 35. The Request for Advance for Advance or Reimbursement SF–270 (LM–6) and the Financial Status Report SF–269a (LM–7) are also OMB forms with no agency additions. The estimated average time burden per respondent per form: 30 minutes and approximate number of responses: 20. Project Performance (LM–8) had approximately 20 respondents and the estimated time per response is 20 minutes. FMCS Grants Program Evaluation Questionnaire (LM–9) number of respondents is approximately 10 and the estimated time per response is 60 minutes. The Accounting System and Financial Capability Questionnaire (LM–3) has approximately 20 respondents and the estimated time per response is 60 minutes.

**II. Request for Comments**

The FMCS is particularly interested in comments which:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, *e.g.* permitting electronic and fax submission of responses.

**List of Subjects**

Labor-Management Cooperation Grant Program and Information Collection Requests.

Dated: January 20, 2011.

**Michael J. Bartlett,**

*Deputy General Counsel.*

[FR Doc. 2011–1464 Filed 1–24–11; 8:45 am]

**BILLING CODE 6732–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 9, 2011.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Carlyle Financial Services Harbor, L.P.; CGFSP Coinvestment, L.P.; Carlyle Global Partner Master Coinvestment Cayman, L.P.; Carlyle Global Financial Services Partners, L.P.; TCG Financial Services, L.P;, Carlyle Financial Services, Ltd.; TC Group Cayman Investment Holdings, L.P.; TCG Holdings Cayman II, L.P.; DBD Cayman, Limited; TCG Financial Services Investment Holdings, L.P.; Carlyle Financial Services Holdings, Ltd.,* all in Grand Cayman, Cayman Islands, Daniel A. D'Aniello; William E. Conway, Jr.; David M. Rubenstein, all in Washington, D.C.; and Carlyle Investment Management, L.L.C.; TC Group, L.L.C.; and TCG Holdings, L.L.C., all in Wilmington, Delaware; to acquire voting shares of Brand Group Holdings, Inc., thereby indirectly acquire voting shares of The Brand Banking Company, both in Lawrenceville, Georgia.

Board of Governors of the Federal Reserve System, January 20, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–1496 Filed 1–24–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $26,867,000 for Section 8(a)(1), and $2,686,700 for Section 8(a)(2)(A).

**DATES:** *Effective Date:* January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** James F. Mongoven, Bureau of Competition, Office of Policy and Coordination, (202) 326–2879.

**Authority:** 15 U.S.C. 19(a)(5).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–1498 Filed 1–24–11; 8:45 am]

**BILLING CODE 6750–01–P**

## FEDERAL TRADE COMMISSION

### Revised Jurisdictional Thresholds for Section 7a of The Clayton Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act. Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino

Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390 ("the Act"), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). The new thresholds, which take effect 30 days after publication in the **Federal Register**, are as follows:

| Subsection of 7A | Original threshold | Adjusted threshold |
|---|---|---|
| 7A(a)(2)(A) | $200 million | $263.8 million. |
| 7A(a)(2)(B)(i) | $50 million | $66.0 million. |
| 7A(a)(2)(B)(i) | $200 million | $263.8 million. |
| 7A(a)(2)(B)(ii)(i) | $10 million | $13.2 million. |
| 7A(a)(2)(B)(ii)(i) | $100 million | $131.9 million. |
| 7A(a)(2)(B)(ii)(II) | $10 million | $13.2 million. |
| 7A(a)(2)(B)(ii)(II) | $100 million | $131.9 million. |
| 7A(a)(2)(B)(ii)(III) | $100 million | $131.9 million. |
| 7A(a)(2)(B)(ii)(III) | $10 million | $13.2 million. |
| Section 7A note: Assessment and Collection of Filing Fees [1] (3)(b)(1) | $100 million | $131.9 million. |
| Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) | $100 million | $131.9 million. |
| Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) | $500 million | $659.5 million. |
| Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3) | $500 million | $659.5 million. |

[1] Public Law 106–553, Sec. 630(b) amended Sec. 18a note.

Any reference to these thresholds and related thresholds and limitation values in the HSR rules (16 CFR Parts 801–803) and the Antitrust Improvements Act Notification and Report Form and its Instructions will also be adjusted, where indicated by the term "(as adjusted)," as follows:

| Original threshold | Adjusted threshold |
|---|---|
| $10 million | $13.2 million |
| $50 million | $66.0 million |
| $100 million | $131.9 million |
| $110 million | $145.1 million |
| $200 million | $263.8 million |
| $500 million | $659.5 million |
| $1 billion | $1,319.0 million |

**DATES:** *Effective Date:* February 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** B. Michael Verne, Bureau of Competition, Premerger Notification Office, (202) 326–3100.

**Authority:** 16 U.S.C. 7A.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–1501 Filed 1–24–11; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Information Technology Extension Program

**ACTION:** Public Notice.

**SUMMARY:** This notice announces changes to the Health Information Technology Extension Program, which assists providers seeking to adopt and become meaningful users of health information technology, as authorized under section 3012(c) of the Public Health Service Act, as added by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (ARRA).

**FOR FURTHER INFORMATION CONTACT:** The Office of the National Coordinator for Health Information Technology, 200 Independence Ave, SW., Suite 729D, Washington, DC 20201, Phone 202–690–7151, E-mail: *onc.request@hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (ARRA). Title XIII of Division A and Title IV of Division B of ARRA, together cited as the Health Information Technology for Economic and Clinical Health Act (HITECH Act), include provisions to promote meaningful use of health information technology to improve the quality and value of American health care. The HITECH Act also established the Office of the National Coordinator for Health Information Technology (ONC) within the U.S. Department of Health and Human Services (HHS) as the principal Federal entity responsible for coordinating the effort to implement a nationwide health information technology (health IT) infrastructure that allows for the use and exchange of electronic health information in electronic format.

Subtitles A and B of Title IV in Division B of ARRA authorize incentive payments for eligible Medicare and Medicaid providers' adoption and meaningful use of certified electronic health record (EHR) technology. In 2015, Medicare eligible providers are expected to have adopted and be actively utilizing certified EHR technology in compliance with the "meaningful use" definition or they will be subject to payment adjustments under Medicare (per sections 4101(b) and 4102(b) of ARRA). The detailed criteria to qualify for meaningful use incentive payments were established by the Secretary of HHS (hereafter referred to as the Secretary) through the formal notice-and-comment rulemaking process. For access to the most current publicly available information about meaningful use, please visit the Meaningful Use section of the ONC programmatic Web site (*http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__meaningful_use_announcement/2996*) and *http://www.cms.gov/EHRIncentivePrograms/.*

Providers seeking to meaningfully use certified EHR technology face a variety of challenging tasks. Those tasks include assessing needs, selecting and negotiating with a system vendor or reseller, implementing project management, and instituting workflow changes to improve clinical performance and ultimately, outcomes. Past experience has shown that robust local technical assistance can result in effective implementation of EHRs and quality improvement throughout a defined geographic area.

Section 3012 of the Public Health Service Act (PHSA), as added by ARRA (*see* Appendix A), authorized the establishment of the Health Information Technology Extension Program (Extension Program). By statute, the Extension Program is to include a national Health Information Technology

Research Center (HITRC), and grant funding toward the creation and operation of Regional Extension Centers (Regional Centers).

The purpose of the Regional Centers is to furnish assistance (defined as education, outreach, and technical assistance) to help providers in their geographic service areas select, successfully implement, and meaningfully use certified EHR technology to improve the quality and value of health care. Regional Centers will also help providers achieve, through appropriate available infrastructures, exchange of health information in compliance with applicable statutory and regulatory requirements, and patient preferences. In doing this work, Regional Centers will also seek to ensure consistency with any applicable State HIE plan(s) that are developed under the cooperative agreements issued by ONC pursuant to section 3013 of the PHSA.

Pursuant to requirements of section 3012(c)(5) of the PHSA, Regional Centers must give priority to providers that are primary-care providers (physicians and/or other health care professionals with prescriptive privileges, such as physician assistants and nurse practitioners) in any of the following settings:

- Individual and small group practices (ten or fewer professionals with prescriptive privileges) primarily focused on primary care;
- Public and Critical Access Hospitals;
- Community Health Centers and Rural Health Clinics; and
- Other settings that predominantly serve uninsured, underinsured, and medically underserved populations.

A practice otherwise meeting the definition of individual or small-group physician practice, above, may participate in shared-services and/or group purchasing agreements, and/or reciprocal agreements for patient coverage, with other physician practices without affecting its status as individual or small-group practice for purposes of the Regional Centers.

In any given Regional Center's service area, some priority primary-care providers (as described above) may have already acquired and/or implemented EHR technology. Such providers remain priority providers, though the technical assistance required is anticipated to be focused on movement from having an EHR to achieving all aspects of meaningful use of EHR technology, including but not necessarily limited to electronic exchange of health information and reporting of quality measures using the EHR.

The ultimate measure of a Regional Center's effectiveness will be whether it has assisted providers in becoming meaningful users of certified EHR technology.

Cooperative agreement awards were made pursuant to an open competition to establish 62 Regional Centers. The awards were made on a rolling basis. The first set of 32 Regional Center awards was made in February 2010, the second set of 28 awards was made in April 2010, and the final 2 awards were made in September 2010.

While section 3012(c)(5) of the PHSA generally limited Federal funding for Regional Centers to 50% of their capital and annual operating and maintenance funds, it included a provision allowing for different cost sharing in instances in which the prescribed cost sharing ceiling would "render this cost-sharing requirement detrimental to the program." The Secretary made this finding, and, as a result, the original cooperative agreement award was comprised of a four-year project period, consisting of two two-year budget periods. The first budget period (years 1 and 2) had a 90/10 cost share requirement and the second budget period (years 3 and 4) had a 10/90 cost share requirement. For the first budget period the grantee was responsible for contributing 1 dollar for every 9 Federal dollars. For the second budget period, the grantee was responsible for contributing 9 dollars for every 1 dollar of Federal funds.

## II. Description of Changes

In overseeing the ongoing Extension Program, the Secretary found that the established cost sharing requirements (90/10 in years one and two, and 10/90 in years three and four) are continuing to "render [the] cost-sharing requirement detrimental to the program" due to national economic conditions To alleviate these concerns, the Secretary will be seeking bi-lateral modifications to the grants to alter the initial timeline and cost-sharing requirements in the Regional Center grants. Through these modifications, the timeline would be lengthened in the first budget period from two years to four years, and the cost-sharing requirement would reflect a 90/10 Federal/grantee cost share for all four years. Modifications will be effectuated through the execution of revised Notice of Grant Awards (NGA).

If modified, the cost share requirements for the cooperative agreement will be as follows:

| Year | Federal amount of costs (percent) | Recipient amount of costs (percent) |
|---|---|---|
| 1 | 90 | 10 |
| 2 | 90 | 10 |
| 3 | 90 | 10 |
| 4 | 90 | 10 |

It is expected that the Regional Centers will generate resources to support cost sharing in ways that demonstrate hospital, provider, and community commitment to the project and its goals of supporting adoption and meaningful use of health IT. Such sources of funding to support the project's cost share obligation under the cooperative agreement could include per-provider participation fees. This statement does not preclude recipients using other legal sources of cost sharing contributions as governed by 45 CFR part 74. All of the funds for cooperative agreement should be spent during the base award's budget period (Years 1, 2, 3, and 4), including the cost sharing requirement described above.

Fees and other funds generated by the project are considered program income under 45 CFR Part 74. Program income generated by the recipient must be retained by the recipient and first used to finance the non-Federal share of the project. To support sustainability, ONC places no limits on the accrual of program income. After the Federal cost sharing requirement is met, program income generated using Federal funds, including fees for services, must be added to funds committed to the project by the Federal government and used to further eligible project or program objectives.

As stated in the original Funding Opportunity Announcement (FOA), a positive biennial evaluation will be required for grantees to continue work in years 3 and 4 of the grant; this requirement is unchanged by the December 2010 waiver. The anticipated bi-lateral modifications to the original grants will include achievement of a positive biennial evaluation as a term and condition of the grant. The previously approved goals, objectives, activities and timelines of the Regional Center program remain unchanged.

**David Blumenthal,**

*National Coordinator for Health Information Technology.*

[FR Doc. 2011–1447 Filed 1–24–11; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

*Name of Committees:* HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Enrollment, Governance, Adoption/Certification, PCAST Report, and Information Exchange workgroups.

*General Function of the Committee:* To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The HIT Policy Committee Workgroups will hold the following public meetings during February 2011: February 4th, Privacy & Security Tiger Team, 10 a.m. to 12 p.m./ET; February 7th, Information Exchange Workgroup, 10 a.m. to 12 p.m./ET; February 9th, Enrollment Workgroup, 12 p.m. to 2 p.m./ET; February 14th, Privacy & Security Tiger Team, 10 a.m. to 12 p.m./ET; February 15–16, per PCAST Report Workgroup (location: TBD); and February 25th, Privacy & Security Tiger Team, 10 a.m. to 12 pl.m.

*Location:* All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov*. Please check the ONC Web site for additional information or revised schedules as it becomes available.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The workgroups will be discussing issues related to their specific subject matter, *e.g.,* meaningful use, information exchange, privacy and security, enrollment, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: January 14, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–1400 Filed 1–24–11; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Policy Committee.

*General Function of the Committee:* To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The meeting will be held on February 2, 2011, from 10 a.m. to 3 p.m./Eastern Time.

*Location:* The Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Privacy & Security Tiger Team, the Information Exchange Workgroup, the Enrollment Workgroup, and the Quality Measures Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 28, 2011. Oral comments from the public will be

scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: January 14, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–1412 Filed 1–24–11; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Standards Committee's Workgroup Meetings; Notice of Meetings

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

*Name of Committees:* HIT Standards Committee's Workgroups: Clinical Operations, Vocabulary Task Force, Implementation, and Privacy & Security workgroups.

*General Function of the Committee:* To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

*Date and Time:* The HIT Standards Committee Workgroups will hold the following public meetings during February 2011: February 1st Clinical Operations Workgroup, 11 a.m. to 12:30 p.m./ET; and February 23rd Vocabulary Task Force, 9 to 11 a.m./ET.

*Location:* All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available. Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: January 14, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–1413 Filed 1–24–11; 8:45 am]

**BILLING CODE 4150–45–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:** The U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) published the January 25, 2011 Public Meeting notice under exceptional circumstances. The meeting notice was published in the **Federal Register** on January 13, 2011. This supplemental notice provides the reasons for providing less than 15 calendar days notice.

**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 and/or the Assistant Secretary for Preparedness and Response on other matters related to public health emergency preparedness and response.

*Background:* The Assistant Secretary for Preparedness and Response has asked that a meeting of the Board be called to consider a request for recommendations on how to include a

science response as part of the response to disasters. The Secretary has recently invited six individuals to serve as members of the Board due to the expiration of 3-year terms for six members on December 31, 2010. The new members require on-boarding and swearing-in. As a result of the logistics of scheduling the availability of the new members and the continuing voting members, as well as ASPR leadership, there are exceptional circumstances that prevent the normal 15 calendar days notice for this meeting. This is a special meeting of the Board. The next scheduled meeting of the Board will be announced in the **Federal Register** within the required timeframe established by the Federal Advisory Committee Act.

*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.*

Dated: January 14, 2011.

**Nicole Lurie,**

*Assistant Secretary for Preparedness and Response.*

[FR Doc. 2011–1404 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Standards Committee.

*General Function of the Committee:* To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

*Date and Time:* The meeting will be held on February 16, 2011, from 1 p.m. to 5 p.m./Eastern Time.

*Location:* TBD. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Implementation, and Privacy & Security Standards Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 10, 2011. Oral comments from the public will be scheduled between approximately 3 and 4 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: January 18, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–1402 Filed 1–24–11; 8:45 am]

**BILLING CODE 4150–45–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: "Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality." 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 March 28, 2011.

**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

Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality Executive Order 12862 directs agencies that "provide significant services directly to the public" to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." This is a request for the Office of

Management and Budget (OMB) to re-approve for an additional 3 years, under the Paperwork Reduction Act of 1995, the generic clearance for the Agency for Healthcare Research and Quality (AHRQ) to survey the users of AHRQ's work products and services, OMB control number 0935–0106.

Customer surveys will be undertaken by AHRQ to assess its work products and services provided to its customers, to identify problem areas, and to determine how they can be improved. Surveys conducted under this generic clearance are not required by regulation and will not be used by AHRQ to regulate or sanction its customers. Surveys will be entirely voluntary, and information provided by respondents will be combined and summarized so that no individually identifiable information will be released. Proposed information collections submitted under this generic clearance will be reviewed and acted upon by OMB within 14 days of submission to OMB.

In accordance with OMB guidelines for generic clearances for voluntary customer surveys and Executive Order 12862, AHRQ: (1) Has established an independent review process to assure the development, implementation, and analysis of high quality customer surveys within AHRQ; (2) will provide periodic progress reports on the conduct of surveys under the generic approval, summarizing the actual burden; (3) will provide OMB with copies of the survey instruments for inclusion in the docket; and, (4) will notify OMB of any significant changes in proposed survey instruments.

**Method of Collection**

The information collected through focus groups and voluntary customer surveys will be used by AHRQ to identify strengths and weaknesses in products and services to make improvements that are practical and feasible. Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to the lay and health professional public.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated total burden hours for the respondents. Mail surveys are estimated to average 15 minutes, telephone surveys 40 minutes, web-based surveys 10 minutes, focus groups two hours, and in-person interviews are estimated to average 50 minutes. Mail surveys may also be sent to respondents via email, and may include a telephone non-response follow-up.

Telephone non-response follow-up for mailed surveys does not count as a telephone survey. The total burden hours for the 3 years of the clearance is estimated to be 10,150 hours.

Exhibit 2 shows the estimated cost burden for the respondents. The total cost burden for the 3 years of the clearance is estimated to be $340,127.

EXHIBIT 1—ESTIMATED BURDEN HOURS OVER 3 YEARS

| Type of information collection | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Mail/e-mail* | 15,000 | 1 | 15/60 | 3,750 |
| Telephone | 600 | 1 | 40/60 | 400 |
| Web-based | 15,000 | 1 | 10/60 | 2,500 |
| Focus Groups | 1,500 | 1 | 2.0 | 3,000 |
| In-person | 600 | 1 | 50/60 | 500 |
| Total | 32,700 | na | na | 10,150 |

* May include telephone non-response follow-up in which case the burden will not change.

EXHIBIT 2—ESTIMATED COST BURDEN OVER 3 YEARS

| Type of information collection | Number of respondents | Total burden hours | Average hourly wage rate* | Total cost burden |
|---|---|---|---|---|
| Mail/e-mail | 15,000 | 3,750 | $33.51 | $125,663 |
| Telephone | 600 | 400 | 33.51 | 13,404 |
| Web-based | 15,000 | 2,500 | 33.51 | 83,775 |
| Focus Groups | 1,500 | 3,000 | 33.51 | 100,530 |
| In-person | 600 | 500 | 33.51 | 16,755 |
| Total | 32,700 | 10,150 | na | 340,127 |

* Based upon the average wages for 29–000 (Healthcare Practitioner and Technical Occupations), "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**

Information collections conducted under this generic clearance will in some cases be carried out under contract. Assuming the contract cost per survey are $50,000–$100,000, and for each focus group are $20,000, total contract costs could run $ 720,000 per year.

**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: January 3, 2011.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2011–1173 Filed 1–24–11; 8:45 am]

**BILLING CODE 4160–90–M**

## 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: "The Agency for Healthcare Research and Quality (AHRQ) Health Care Innovations Exchange Innovator Interview and Innovator Email Submission Guidelines." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 2nd, 2010 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by February 24, 2011.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (*attention:* AHRQ's desk officer).

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**

The Agency for Healthcare Research and Quality (AHRQ) Health Care Innovations Exchange Innovator Interview and Innovator Email Submission Guidelines

This request for Office of Management and Budget (OMB) review is for renewal of the existing collection that is currently approved under OMB Control No. 0935–0147, AHRQ Health Care Innovations Exchange Innovator Interview and AHRQ Health Care Innovations Exchange Innovator Email Submission Guidelines, which expires on March 31, 2011.

The Health Care Innovations Exchange provides a national-level information hub to foster the implementation and adaptation of innovative strategies that improve health care quality and reduce disparities in the care received by different populations. The Innovations Exchange's target audiences, broadly defined, are current and potential change agents in the U.S. health care system, including clinicians (*e.g.,* physicians, nurses, and other providers), health system administrators, health plan managers, health service purchasers, regulators, and policymakers from relevant Federal and state agencies.

To develop the target of 150 profiles per year, a purposively selected group of approximately 167 health care innovations will be selected annually for potential consideration. These 167 innovations will be selected to ensure that innovations included in the Innovations Exchange cover a broad range of health care settings, care processes, priority populations, and clinical conditions.

The goals of the Health Care Innovations Exchange are to:

(1) Identify health care service delivery innovations and provide a national level repository of searchable innovations and QualityTools that enables health care decisionmakers to quickly identify ideas and tools that meet their needs. These innovations come from many care settings including inpatient facilities, outpatient facilities, long term care organizations, health plans and community care settings. They also represent many patient populations, disease conditions, and processes of care such as preventive, acute, and chronic care;

(2) Foster the implementation and adoption of health care service delivery innovations that improve health care quality and reduce disparities in the care received by different populations.

This data collection is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities (1) with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services, 42 U.S.C. 299a(a), and (2) to promote innovation in evidence-based health care practices and technologies. 42 U.S.C. 299b–5.

**Method of Collection**

To achieve the first goal of the Innovations Exchange the following data collections will be implemented:

(1) E-mail submission—Based on experience during the current approval period, approximately 10% of the 167 health care innovations considered for inclusion annually, and their associated innovators, will submit their innovations via email to the Innovations Exchange without prior contact (about 17 annually). Innovators who submit their innovations for possible publication through the email submission guidelines process will be considered as will innovations identified by project staff through an array of sources that include: Published literature, conference proceedings, news items, list servs, Federal agencies and other government programs and resources, health care foundations, and health care associations.

(2) Health care innovator interview—To collect and verify the information required for the innovation profiles, health care innovators will be interviewed by telephone about the following aspects of their innovation: Health care problem addressed, impetus for the innovation, goals of the innovation, description of the innovation, sources of funding, evaluation results for the innovation, setting for the innovation, history of planning and implementation for the innovation, and lessons learned concerning the implementation of the innovation. Interviews will be conducted with innovators identified by project staff and those identified through email submission.

(3) Annual follow-up reviews—After the innovation profile is published, on a yearly basis, innovators will be contacted by email to review and update their profiles.

The second goal of the Innovations Exchange is achieved by serving as a "one-stop shop" that provides:

(1) Digested and reliable information about innovations in an adoption-friendly format;

(2) Learning resources including expert commentaries, articles, adoption guides and educational Web events, and

(3) Networking opportunities that allow innovators and potential adopters to share information about implementation strategies and lessons learned, including in-person meetings, interactive online events, and the ability for users to post comments and engage in discussions on specific innovations.

The ultimate decision to publish a detailed profile of an innovation depends on several factors, including an evaluation by AHRQ, AHRQ's priorities, and the number of similar ideas in the Innovations Exchange. AHRQ's priorities include identifying and highlighting innovations (1) That will help reduce disparities in health care and health status; (2) that will have significant impact on the overall value of health care; (3) where the innovators have a strong interest in participating; and (4) that have been supported by AHRQ.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this project. Approximately 167 innovators will participate in the initial data collection each year with 150 of those being added to the Innovations Exchange. About 17 innovations will be submitted by e-mail, which requires 30 minutes. All 167 potential innovations will participate in the health care innovator interview, including the 17 submitted via e-mail. The interview will last about 60 minutes and an additional 15 minutes is typically required for the innovator to review and comment on the written profile.

Based on experience, approximately 10% of the candidate innovations either will not meet the inclusion criteria or their innovators will decide not to continue their participation, after the interview. Therefore, about 90% (150) of the 167 candidate innovations will move into the publication stage each year. Annual follow-up reviews will be conducted with all innovations that have been in the Innovations Exchange for at least one full year. With an expected total of 575 innovations in the Exchange by the end of the current approval period, and an additional 450 to be added over the course of the next 3 year approval period, an average of 725 reviews will be conducted annually and will require about 30 minutes to complete. The total annualized burden is estimated to be 581 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total annualized cost burden is estimated to be $19,754.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Name of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| E-mail submission | 17 | 1 | 30/60 | 9 |
| Health care innovator interview | 167 | 1 | 75/60 | 209 |
| Annual follow-up reviews | 725 | 1 | 30/60 | 363 |
| Total | 909 | | | 581 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate* | Total cost burden |
|---|---|---|---|---|
| E-mail submission | 17 | 9 | $34 | $306 |
| Health care innovator interview | 167 | 209 | 34 | 7,106 |
| Annual follow-up reviews | 725 | 363 | 34 | 12,342 |
| Total | 909 | 581 | | $19,754 |

*Based upon the mean hourly wage for healthcare practitioners and technical occupations, Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages, May 2009.

**Estimated Annual Costs to the Federal Government**

Exhibit 3 shows the estimated annualized costs to the Government. The total cost to the Government of this data collection is approximately $592,922 over three years (on average, $197,642 per year). These costs cover data collection efforts for contacting candidate health care innovators, conducting innovator interviews, and contacting innovators annually to update profiles.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

| Cost component | Total cost | Annualized cost |
|---|---|---|
| Data Collection Activities | $82,260 | $27,420 |
| Website Maintenance | 64,172 | 21,391 |
| Project Management | 27,096 | 9,032 |
| Overhead | 419,395 | 139,799 |
| Total | $592,922 | $197,642 |

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ1s 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: January 3, 2011.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2011–1172 Filed 1–24–11; 8:45 am]

**BILLING CODE 4160–90–M**

## 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: "Synthesis Reports for Grants and Cooperative Agreements for Transforming Healthcare Quality through Information Technology (THQIT)." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 2, 2010 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by February 24, 2011.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

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**

*Synthesis Reports for Grants and Cooperative Agreements for Transforming Healthcare Quality Through Information Technology (THQIT)*

AHRQ's health information technology initiative is part of the Nation's strategy to put information technology to work in health care. By developing secure and private electronic health records and making health information available electronically when and where it is needed, health IT can improve the quality of care, even as it makes health care more cost-effective. This proposed information collection will help AHRQ enhance the evidence base to support effective information technology (IT) implementation and add to knowledge about health IT by synthesizing and drawing lessons from its Transforming Healthcare Quality through Information Technology (THQIT) program.

From 2004–2010, the THQIT program has supported the adoption of health IT through 118 grants and cooperative agreements. These grants fall into three main categories: planning grants, implementation grants and value demonstration grants. Planning grants are intended to develop health IT infrastructure and data-sharing capacity among clinical provider organizations in their communities by (1) Creating multidisciplinary collaboratives and coalitions of health care providers, (2) conducting needs assessments and feasibility studies, and (3) developing plans to implement electronic health records. Implementation grants support community-wide and regional health IT systems by (1) Developing shared registries, electronic health record systems, and telemedicine networks, (2) integrating clinical data from a variety of health IT systems, including pharmacy, laboratory, and public health organizations, (3) redesigning clinical workflow to improve patient care and provider access to information and (4) creating novel methods for delivering information to providers. Value demonstration grants evaluate how the adoption of health IT will (1) Impact quality, safety, and resource use in large, integrated delivery systems, (2) advance the effectiveness of Web-based, patient education tools and (3) improve patient transitions between health care facilities and their homes. The program places an emphasis on grants to rural health organizations.

AHRQ does not currently have a system in place for assessing the overall outcomes and lessons learned from these health IT grants. This project seeks to create such a system and has the following goals:

(1) Further the state of knowledge of health IT planning, implementation, and effects by synthesizing the experiences of THQIT grantees and the reported effects of the grants;

(2) Translate this knowledge into a practical tool to assist rural hospitals with electronic health record implementations; and

(3) Translate this knowledge into recommendations for AHRQ activities.

This study is being conducted by AHRQ through its contractor, Mathematica Policy Research, Inc. (Mathematica), pursuant to AHRQ's statutory authority to conduct and support research (1) on healthcare and on systems for the delivery of such care, 42 U.S.C. 299a, and (2) on information systems for health care improvement. 42 U.S.C. 299b–3.

**Method of Collection**

To achieve the goals of this project the following data collections will be implemented:

(1) Planning Grant Survey for all grantees that received a planning grant;

(2) Implementation Grant Survey for all grantees that received an implementation grant;

(3) Value Grant Survey for all grantees that received a value grant; and

(4) In-Depth Interviews will be conducted via telephone with a sample of grantees from each of the three types of grants. Given the complex nature of many of the projects conducted under these grants, from each selected grantee organization 1 to 3 persons with different areas of expertise will participate in the interview with the

most knowledgeable person responding to a given question. Questions vary by grant type.

These proposed data collections will gather information from grantee principal investigators on topics including: (1) Partnerships, which were required of all the grantees—what types are most effective and long-lasting and how partnerships can be made more effective; (2) planning for health IT—information that can help identify successful pathways; (3) implementation of health IT—including common and unique barriers and facilitators to implementation across types of health IT and care settings; (4) the outcomes, benefits, and drawbacks of the grant projects; and (5) the sustainability and expansion of implemented health IT.

Collecting this information will assist AHRQ in its mission of supporting the synthesis and dissemination of available evidence for the planning, implementation, and use of health IT by patients, practitioners, providers, purchasers, policymakers, and educators.

The proposed data collection is also designed to assist AHRQ in improving the effectiveness with which it supports future research, synthesis, and initiatives on health IT topics. The grantees' experiences with the THQIT grant process and features is an important topic covered including feedback on whether the funding and time period were sufficient, how effective the grant was in furthering health IT in grantee organizations, and whether planning grants are a useful mechanism to prepare health care organizations and researchers to participate in future large-scale research.

This research also supports AHRQ's mission, 42 U.S.C. 299(c), to specifically focus on rural populations and priority populations by collecting information on special factors affecting rural health care grantees, and the outcomes of the grant projects for AHRQ priority populations.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours associated with the respondents' time to participate in this research. The Value Grant Survey will be completed by the 24 grantees that received a value grant and takes 30 minutes to complete. The Planning Grant Survey will be completed by all 38 recipients of a planning grant and requires 30 minutes to complete. The Implementation Grant Survey will be completed by the 56 grantees that received an implementation grant and takes 45 minutes to complete. In-depth interviews will be conducted with 1 to 3 persons (2 on average) from each of 30 different grantee organizations and is estimated to average 1.8 hours; actual burden will vary since some sections apply to specific grant types. The total annualized burden is estimated to be 181 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total annualized cost burden is estimated to be $7,917.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of response per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Value Grant Survey | 24 | 1 | 30/60 | 12 |
| Planning Grant Survey | 38 | 1 | 30/60 | 19 |
| Implementation Grant Survey | 56 | 1 | 45/60 | 42 |
| In-Depth Interviews | 30 | 2 | 1.8 | 108 |
| Total | 148 | n/a | n/a | 181 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate* | Total Cost burden |
|---|---|---|---|---|
| Value Grant Survey | 24 | 12 | 43.74 | $525 |
| Planning Grant Survey | 38 | 19 | 43.74 | 831 |
| Implementation Grant Survey | 56 | 42 | 43.74 | 1,837 |
| In-Depth Interviews | 30 | 108 | 43.74 | 4,724 |
| Total | 148 | 181 | na | 7,917 |

*Based upon the mean of the average wages for medical and health services managers, Department of Labor, Bureau of Labor Statistics, Occupational and Employment Wages. May 2009. Accessed at: *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

**Estimated Annual Costs to the Federal Government**

Exhibit 3 shows the estimated total and annualized cost for this project. Although data collection activities will last for one year, the entire project will span 2.25 years; therefore, the annualized costs cover two and a quarter years. The total project cost is estimated to be $600,055.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

| Cost component | Total cost | Annualized cost |
|---|---|---|
| Project Development | $80,584 | $35,815 |
| Data Collection Activities | 72,198 | 32,088 |
| Data Processing and Analysis | 52,389 | 23,284 |

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

| Cost component | Total cost | Annualized cost |
|---|---|---|
| Publication of Results | 149,476 | 66,434 |
| Project Management | 70,313 | 31,250 |
| Overhead | 175,095 | 77,820 |
| Total | 600,055 | 266,691 |

**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: January 3, 2011.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2011–1169 Filed 1–24–11; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0370]**

### Draft Guidance for Industry: Questions and Answers Regarding Implementation of the Menu Labeling Provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010; Withdrawal of Draft Guidance

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance entitled "Draft Guidance for Industry: Questions and Answers Regarding Implementation of the Menu Labeling Provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010" dated August 2010, that was announced in the **Federal Register** of August 25, 2010. FDA now intends to complete the notice and comment rulemaking process for the Patient Protection and Affordable Care Act of 2010 (hereinafter "section 4205") before initiating enforcement activities based, in part, on extensive comments on the draft guidance submitted to the Agency. FDA believes that this approach to implementing section 4205 will minimize uncertainty and confusion among all interested persons.

**DATES:** The withdrawal is effective January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Geraldine A. June, Center for Foods Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of August 25, 2010 (75 FR 52426), FDA announced the availability of a draft guidance entitled "Draft Guidance for Industry: Questions and Answers Regarding Implementation of the Menu Labeling Provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010." As stated in the draft guidance, certain provisions of section 4205 became requirements immediately upon enactment of the law. FDA recognized that industry may need additional guidance from the Agency and time to comply with these provisions. As a result, FDA stated that it expected to refrain from initiating enforcement action against establishments that are subject to, but not in compliance with, the provisions of section 4205 that became requirements immediately upon enactment of the law until a time period established in the draft guidance. FDA also stated that it anticipated issuing the guidance in December 2010.

Based, in part, on extensive comments on the draft guidance submitted to the Agency, FDA now intends to complete the notice-and-comment rulemaking process for section 4205 before initiating enforcement activities. As noted in the draft guidance, FDA is required to issue proposed regulations to carry out provisions of section 4205 no later than March 23, 2011. FDA intends to meet this statutory deadline. In the course of developing the proposed rule, the Agency has considered the comments received on the draft guidance. FDA will then review the comments it receives on the proposed rule and issue a final rule expeditiously.

FDA believes that this approach to implementing section 4205 will minimize uncertainty and confusion among all interested persons. The Agency also believes that expeditious completion of the rulemaking process will most rapidly lead to full and consistent availability of the newly required nutrition information for consumers.

For these reasons, FDA is at this time withdrawing the draft guidance entitled "Draft Guidance for Industry: Questions and Answers Regarding Implementation of the Menu Labeling Provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010."

Dated: January 20, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–1530 Filed 1–21–11; 12:00 pm]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–D–0559]**

### Guidance for Industry on Process Validation: General Principles and Practices; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the

availability of a guidance for industry entitled "Process Validation: General Principles and Practices." This guidance provides information for the pharmaceutical industry on the elements of process validation for the manufacture of human and animal drug and biological products, including active pharmaceutical ingredients (APIs). The guidance is intended to provide clear and consistent communication of regulatory expectations and to promote voluntary compliance with current FDA requirements. This guidance revises and replaces the guidance for industry entitled "Guideline on General Principles of Process Validation," dated May 1987.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Brian Hasselbalch, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4364, Silver Spring, MD 20993–0002, 301–796–3279; or

Grace McNally, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4374, Silver Spring, MD 20993–0002, 301–796–3286; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or

Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8268.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled "Process Validation: General Principles and Practices." This guidance document provides guidance to the pharmaceutical industry on the elements of process validation for the manufacture of human and animal drug and biological products, including APIs.

This guidance describes process validation activities in three stages:

- In Stage 1, Process Design, the commercial process is defined based on knowledge gained through development and scale-up activities.
- In Stage 2, Process Qualification, the process design is evaluated and assessed to determine if the process is capable of reproducible commercial manufacturing.
- In Stage 3, Continued Process Verification, ongoing assurance is gained during routine production that the process remains in a state of control.

In addition to discussing activities typical of each stage of process validation, the guidance provides recommendations regarding appropriate documentation and analytical methods to be used during process validation.

In the **Federal Register** of November 18, 2008 (73 FR 68431), FDA announced the availability of a draft guidance of the same title and gave interested persons the opportunity to submit comments by January 20, 2009. In the **Federal Register** of February 13, 2009 (74 FR 7237), the Agency reopened the comment period to March 16, 2009. The Agency received public comments from a broad spectrum of the pharmaceutical industry. In response to comments received on the draft guidance, the Agency added a glossary of terms and clarified or added more specific guidance on certain issues.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the general principles and practices of process validation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information requested in the guidance are covered under FDA regulations at 21 CFR part 211, 21 CFR 314.70, and 21 CFR 601.12 and are approved under OMB control numbers 0910–0139, 0910–0001 and 0910–0338, respectively.

## III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm,* or *http://www.regulations.gov.*

Dated: January 19, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–1437 Filed 1–24–11; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review: Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to

OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: HRSA AIDS Drug Assistance Program Quarterly Report—(OMB No. 0915–0294): Extension**

HRSA's AIDS Drug Assistance Program (ADAP) is funded through Part B of Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (The Ryan White HIV/AIDS Program), which provides grants to states and territories. ADAP provides medications for the treatment of HIV disease. Program funds may also be used to purchase health insurance for eligible clients or for services that enhance access, adherence, and monitoring of drug treatments.

Each of the 50 states, the District of Columbia, Puerto Rico, and several territories receive ADAP grants. As part of the funding requirements, ADAP Grantees submit quarterly reports that include information on patients served, pharmaceuticals prescribed, pricing, sources of support to provide AIDS medication treatment, eligibility requirements, cost data, and coordination with Medicaid. Each quarterly report requests updates from programs on the number of patients served, type of pharmaceuticals prescribed, and prices paid to provide medication. The first quarterly report of each ADAP fiscal year (due in July of each year) also requests information that only changes annually (*e.g.,* state funding, drug formulary, eligibility criteria for enrollment, and cost-saving strategies including coordination with Medicaid).

The quarterly report represents the best method for HRSA to determine how ADAP Grants are expended and to provide answers to requests from Congress and other organizations.

The estimated annual burden is as follows:

| Form | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| 1st Quarterly Report | 57 | 1 | 57 | 3 | 171 |
| 2nd, 3rd, & 4th Quarterly Reports | 57 | 3 | 171 | 1.5 | 256.5 |
| Total | 57 | ..... | 228 | ..... | 427.5 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this **Federal Register** Notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: January 19, 2011.

**Robert Hendricks,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2011–1457 Filed 1–24–11; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

**[Docket No. TSA–2004–19515]**

### Extension of Agency Information Collection Activity Under OMB Review: Air Cargo Security Requirements

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-day notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0040, abstracted below, to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of this collection of information on October 14, 2010, 75 FR 63192. TSA has not received any comments. The collections of information that make up this ICR involve five broad categories affecting airports, passenger aircraft operators, foreign air carriers, indirect air carriers operating under a security program, and all-cargo carriers. These five categories are: Security programs, security threat assessments (STA), known shipper data via the Known Shipper Management System (KSMS), cargo screening reporting, and evidence of compliance recordkeeping.

**DATES:** Send your comments by February 24, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Comments may be mailed or delivered to Joanna Johnson, PRA Officer, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20596–6011. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Joanna Johnson, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651 or e-mail *joanna.johnson@dhs.gov.*

**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 soliciting 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**

*Title:* Air Cargo Security Requirements.

*Type of Request:* Renewal of one currently approved Information Collection Request (ICR).

*OMB Control Number:* 1652–0040.

*Form(s):* Aviation Security Known Shipper Verification Form, Aircraft Operator or Air Carrier Reporting Template, Security Threat Assessment Application, Aviation Security Known Shipper Verification Form.

*Affected Public:* The collections of information that make up this ICR involve regulated entities including airports, passenger aircraft operators, foreign air carriers, indirect air carriers operating under a security program, and all-cargo carriers.

*Abstract:* TSA is seeking renewal of an expiring collection of information. Congress set forth in the Aviation and Transportation Security Act (ATSA), Public Law 107–71, two specific requirements for TSA in the area of air cargo security: (1) To provide for screening of all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft; and (2) to establish a system to screen, inspect, report, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft as soon as practicable. TSA must proceed with the ICR for this program in order to meet the Congressional mandates and current regulations (49 CFR 1542.209, 1544.205, 1546.205, and part 1548) that enable them to accept, screen, and transport air cargo. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

This information collection requires the "regulated entities," who may include passenger and all-cargo aircraft operators, foreign air carriers, and indirect air carriers (IACs), to implement a standard security program or to submit modifications to TSA for approval, and update such programs as necessary. The regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct security threat assessments (STA) for individuals with unescorted access to cargo, and any individual who has responsibility for screening cargo under 49 CFR parts 1544, 1546, or 1548. Aircraft operators and foreign air carriers must report the volume of accepted and screened cargo transported on passenger aircraft. Further, TSA will collect identifying information for both companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft. This information is primarily collected electronically via the Known Shipper Management System (KSMS). Whenever the information cannot be entered into KSMS, the regulated entity must conduct a physical visit of the shipper using the Aviation Security Known Shipper Verification Form and subsequently enter that information into KSMS. These regulated entities must also maintain records pertaining to security programs, training, and compliance.

*Number of Respondents:* 4,890.

*Estimated Annual Burden Hours:* An estimated 73,567 hours.

Issued in Arlington, Virginia, on January 18, 2011.

**Joanna Johnson,**

*Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2011–1495 Filed 1–24–11; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5486–N–02]**

## Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Transformation Initiative: Sustainable Communities Research Grant Program

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comment Due Date: March 28, 2011.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Regina Gray, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8132, Washington, DC 20410–6000.

**FOR FURTHER INFORMATION CONTACT:** Regina Gray at (202) 402–2876 (this is not a toll-free number), for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Notice of Funding Availability for the Transformation Initiative: Sustainable Communities Research Grant Program.

**OMB Control Number**

*Description of the Need for the Information and Proposed Use:* The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

*Agency Form Numbers:* SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–96010 and HUD–96011.

*Members of the Affected Public:* Nationally recognized and accredited institutions of higher education; non-profit foundations, think tanks, research consortia or policy institutes, and for-profit organizations located in the U.S.. Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly and annual basis:

(1) Pre-Award

a. HUD estimates that each applicant spends approximately 7 person-hours to complete the preliminary application phase. Almost all of this time is invested by a researcher, expert, analyst. HUD estimates the mean hourly rate at $30. For 15 applications, the computation is as follows: 15 applications × 7 hours × $30 per hours = $3,150.

HUD estimates that each applicant spends approximately 41.25 person-hours to complete an application. Almost all of this time is invested by a researcher, expert, analyst. HUD estimates the mean hourly rate at $30. For 10 applications, the computation is as follows: 10 applications × 41.25 hours × $30 per hours = $12,375.

(2) Post-Award

HUD estimates that each grantee will spend approximately 6 hours a year maintaining records. HUD also estimates that each grantee will spend approximately 4 hours a year preparing monitoring reports. Clerical staff and faculty/supervisory staff will share this burden. HUD estimates the applicable hourly rate at $15. The computation is as follow: 2 grantees × 10 hours × $15 an hour = $300.

| Description of information collection | Number of respondents | Responses per year | Total annual responses | Hrs per response | Total hours |
|---|---|---|---|---|---|
| SF424 | 30 | 1 | 30 | 0.75 | 11.25 |
| Pre-application stage | 30 | 1 | 30 | 7 | 105 |
| SF424 Supplement | 20 | 1 | 20 | 0.08 | .8 |
| HUD 424CB | 20 | 1 | 20 | 3 | 60 |
| SFLLL | 20 | 1 | 20 | 0.17 | 3.4 |
| HUD 2880 (2510–0011) | 20 | 1 | 20 | 0 | 0 |
| HUD 96010 (2535–0114) | 20 | 1 | 20 | 3 | 60 |
| Rating factor 1 | 20 | 1 | 20 | 7 | 140 |
| Rating factor 2 | 20 | 1 | 20 | 7 | 140 |
| Rating factor 3 | 20 | 1 | 20 | 7 | 140 |
| Rating factor 4 | 20 | 1 | 20 | 7 | 140 |
| Rating factor 5 | 20 | 1 | 20 | 7 | 140 |
| Subtotal (Application) | 20 | 1 | 20 | 49 | 980 |
| Quarterly Reports | 5 | 4 | 20 | 6 | 120 |
| Record keeping | 5 | ..... | 5 | 4 | 20 |
| Total | 20 | ..... | 10 | Varies | 1,120 |

*Status of the proposed information collection:* Pending OMB approval.

**Authority:** U.S. Code Title 12, 1701z Research and demonstrations.

Dated: January 14, 2011.

**Raphael W. Bostic,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. 2011–1526 Filed 1–24–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR-5411–N–08]**

## Credit Watch Termination Initiative; Termination of Direct Endorsement (DE) Approval

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

**ACTION:** Notice.

**SUMMARY:** This notice advises of the cause and effect of termination of Direct Endorsement (DE) Approval taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their DE Approval terminated.

**FOR FURTHER INFORMATION CONTACT:** The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Approval Agreements terminated. On January 21, 2010 HUD issued Mortgagee Letter 2010–03 which advised the extended procedures for terminating Underwriting Authority of Direct Endorsement mortgagees.

*Termination of Direct Endorsement Approval:* Approval of a DE mortgagee by HUD/FHA authorizes the mortgagee to underwrite single family mortgage loans and submit them to FHA for insurance endorsement. The Approval may be terminated on the basis of poor performance of FHA-insured mortgage loans underwritten by the mortgagee. The termination of a mortgagee's DE Approval is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

*Cause:* HUD's regulations permit HUD to terminate the DE Approval with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 250 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the quarterly review period ending September 30, 2010, HUD is terminating the DE Approval of mortgagees whose default and claim rate exceeds both the national rate and 250 percent of the field office rate.

*Effect:* Termination of the DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance

endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated mortgagee; however, the cases may be transferred for completion of processing and underwriting to another mortgagee with DE Approval in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the DE Approval if the DE Approval for the affected area or areas has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.10 and 202.12. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

*Action:* The following mortgagees have had their DE Approvals terminated by HUD:

| Mortgagee Name | Mortgagee home office address | HUD Office jurisdictions | Termination effective date | Homeownership centers |
|---|---|---|---|---|
| Birmingham Bancorp Mortgage Corp. | 6230 Orchard Lake Rd., Ste 280 West Bloomfield, MI 48322. | Detroit | 11/15/10 | Philadelphia. |
| CMG Mortgage Inc | 3160 Crow Canyon Rd., Ste 400 San Ramon, CA 94583. | Chicago | 12/14/10 | Atlanta. |
| MVB Mortgage Corp | 24400 Northwestern Hwy., Southfield, MI 48075. | Detroit | 11/16/10 | Philadelphia. |
| NTFN Inc | 5301 Village Creek Dr., Ste B, Plano, TX 75093. | Oklahoma City | 11/26/10 | Denver. |
| Pine State Mortgage Corp | 6065 Roswell Rd., NE Ste 300, Atlanta, GA 30328. | Atlanta | 11/15/10 | Atlanta. |
| Popular Mortgage Corp | 14750 NW 77th Ct., Ste 313, Hialeah, FL 33016. | Miami | 11/15/10 | Atlanta. |
| Universal Mortgage Corp | 12080 Corporate Pkwy., Mequon, WI 53092 | Indianapolis | 11/15/10 | Atlanta. |
| Universal Mortgage Corp | 12080 Corporate Pkwy., Mequon, WI 53092 | Chicago | 11/15/10 | Atlanta. |

Dated: January 19, 2011.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2011–1527 Filed 1–24–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Renewal of the Trinity River Adaptive Management Working Group

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior (Secretary), after consultation with the General Services Administration, has renewed the Trinity River Adaptive Management Working Group (Working Group) for 2 years. The Working Group provides recommendations on all aspects of the implementation of the Trinity River Restoration Program and affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts.

**FOR FURTHER INFORMATION CONTACT:** Randy Brown, Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; 707–822–7201.

**SUPPLEMENTARY INFORMATION:** The Working Group conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S. C. Appendix). It reports to the Trinity River Management Council (TMC) and functions solely as an advisory body. The TMC reports to the Secretary through the Mid-Pacific Regional Director of the Bureau of Reclamation and the Pacific Southwest Regional Director (Region 8) for the Fish and Wildlife Service. The Working Group provides recommendations and advice to the TMC on: (1) The effectiveness of management actions in achieving restoration goals and alternative hypotheses (methods and strategies) for study, (2) the priority for restoration projects, (3) funding priorities, and (4) other components of the Trinity River Restoration Program.

Working Group members represent the varied interests associated with the Trinity River Restoration Program. Members are selected from, but not limited to, Trinity County residents, recreational and commercial fishermen, commercial and recreational boaters, power/utility companies, agricultural water users, private and commercial timber producers, ranchers and people with grazing rights/permits, tribes, environmental organizations, and Federal, State, and local agencies with responsibilities in the Trinity River Basin. Members must be senior representatives of their respective constituent groups with knowledge of the Trinity River Restoration Program, including the Adaptive Environmental Assessment and Management Program.

We have filed a copy of the Working Group's charter with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, United States Senate; Committee on Natural Resources, United States House of Representatives; and the Library of Congress.

**Certification**

I hereby certify that the Trinity River Adaptive Management Working Group is necessary and is in the public interest

in connection with the performance of duties imposed on the Department of the Interior by Public Laws 84–386 and 96–335 (Trinity River Stream Rectification Act), 98–541 and 104–143 (Trinity River Basin Fish and Wildlife Management Act of 1984), and 102–575 (Central Valley Project Improvement Act). The Working Group will assist the Department of the Interior by providing advice and recommendations on all aspects of implementation of the Trinity River Restoration Program.

Dated: January 14, 2011.

**Ken Salazar,**

*Secretary of the Interior.*

[FR Doc. 2011–1392 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Iipay Nation of Santa Ysabel Liquor Control Law

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes Liquor Control Law No. LB–06–08 of the Iipay Nation of Santa Ysabel (Nation). The Liquor Control Law regulates and controls the possession, sale, and consumption of liquor within the tribal lands. The tribal lands are located in Indian country and this Liquor Control Law allows for possession and sale of alcoholic beverages within their boundaries. The Liquor Control Law contains provisions requiring the Nation to issue licenses to all businesses that intend to sell liquor. This Liquor Control Law will increase the ability of the tribal government to control the Nation's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Liquor Control Law is effective on January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Fred Doka, Tribal Government Services Officer, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825, Telephone (916) 978–6067; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Legislature of the Nation adopted Bill No. LB 06–08, Liquor Control Law, on October 8, 2008. The purpose of the Liquor Control Law is to govern the distribution, possession, consumption and sale of liquor within tribal lands of the Nation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Legislature of the Iipay Nation of Santa Ysabel adopted its Liquor Control Law, LB 06–08, on October 8, 2008.

Dated: January 11, 2011.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

The Liquor Control Law of the Iipay Nation of Santa Ysabel reads as follows:

**LIQUOR CONTROL LAW**

**ARTICLE I—TITLE.**

**Section 1.1.** This law shall be referred to as the "Liquor Control Law" or the "Liquor Control Ordinance" ("Ordinance").

**ARTICLE II—FINDINGS.**

**Section 2.1.** The Legislature finds:

(a) The Iipay Nation of Santa Ysabel ("Nation") owns and operates the new Santa Ysabel Resort and Casino ("Casino") within the Territory of the Nation; and,

(b) The sale of alcoholic beverages at the Casino provides an amenity to the customers of the Casino and directly impacts the overall financial success of the Casino.

**ARTICLE III—DECLARATION OF PUBLIC POLICY AND PURPOSE.**

**Section 3.1.** The distribution, possession, consumption and sale of liquor on the Santa Ysabel Indian Reservation ("Reservation") is a matter of special concern to the Nation.

**Section 3.2.** Federal law, as codified at 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State Law and the duly enacted law of the Nation. By adoption of this Ordinance, it is the intention of the Legislature to establish a law regulating the sale, distribution and consumption of Liquor and to ensure that such activity conforms with all applicable provisions of the laws of the State of California and all applicable Federal laws.

**Section 3.3.** The Legislature, as the legislative body of the Nation vested with legislative powers, has the authority pursuant to Article V, Section 2 of the Constitution of the Nation ("Constitution") to administer the Nation's assets and manage all economic affairs and enterprises of the Nation, as well as has the inherent right to enact ordinances and laws to safeguard and provide for the health, safety and welfare of the Reservation Community. Accordingly, the Legislature has determined that it is in the best interests of the Nation to enact a law governing the distribution, possession, consumption and sale of liquor within the exterior boundaries of the Reservation.

**Section 3.4.** The Legislature has determined that the purchase, distribution and sale of Liquor shall take place only at duly licensed (i) Tribally owned enterprises; (ii) Tribally-licensed establishments; and (iii) Tribally-sanctioned Special Events, all as operating on Tribal Lands.

**Section 3.5.** The Legislature has determined that any sale or other commercial distribution of Liquor on the Reservation, other than sales and distribution in strict compliance with this Ordinance, is detrimental to the health, safety and welfare of the members of the Nation and is therefore prohibited.

**Section 3.6.** Based upon the foregoing findings and determinations, the Legislature hereby enacts this Liquor Control Ordinance.

**ARTICLE IV—DEFINITIONS**

As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.

**Section 4.1.** Alcohol. That substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including all dilutions and mixtures of this substance.

**Section 4.2.** Alcoholic Beverage. Shall be defined identically in meaning to the term "liquor" as defined herein.

**Section 4.3.** Bar. Any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

**Section 4.4.** Beer. Any beverage obtained by the alcoholic fermentation at an infusion or concoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as "strong beer".

**Section 4.5.** Gaming Compact. The federally approved Tribal-State Compact, dated September 10, 2003, between the State of California and the Nation.

**Section 4.6.** Liquor. The four varieties of liquor herein defined (alcohol, spirits, wine, and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

**Section 4.7.** Liquor Store. Any store at which liquor is sold and, for the purpose of

this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

**Section 4.8.** Licensed Wholesaler. A wholesale seller of liquor that is duly licensed by the Nation and the State.

**Section 4.9.** Malt liquor. Beer, strong beer, ale, stout and porter.

**Section 4.10.** Package. Any container or receptacle used for holding liquor.

**Section 4.11.** Public Place. Includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

**Section 4.12.** Sale and Sell. Any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

**Section 4.13.** Special Event. Any social, charitable or for-profit discreet activity or event conducted by the Nation or any enterprise on Tribal Lands at which Liquor is sold or proposed to be sold.

**Section 4.14.** Spirits. Any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

**Section 4.15.** State Law. The duly enacted applicable laws and regulations of the State of California, specifically, Division 9—Alcoholic Beverages, as set forth at California Business and Professions Code Division 9, Sections 23000 through 25762, as amended from time to time, and all applicable provisions of the Compact.

**Section 4.16.** Legislature. The legislative body of the Nation as defined in the Constitution.

**Section 4.17.** Nation. Means or refers to the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe.

**Section 4.18.** Tribal Enterprise. Any business entity, operation or enterprise owned, in whole or in part, by the Nation.

**Section 4.19.** Tribal Land. All land within the exterior boundaries of the Santa Ysabel Indian Reservation that is held in trust by the United States for the benefit of the Tribe.

**Section 4.20.** Wine. Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice, and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

## ARTICLE V—ENFORCEMENT

**Section 5.1.** Executive Powers. The Chairman of the Nation, as the official vested with the executive powers of the Nation under the Article VI, Section 2 of the Constitution and/or his designee(s), in furtherance of this Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations governing the purchase, sale, consumption and distribution of alcoholic beverages in public places on the Santa Ysabel Indian Reservation as the Chairman deems necessary.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Chairman or his designee(s) to exercise the authority as set forth in this Ordinance.

(c) Issue licenses permitting the sale and/or distribution of Liquor on the Santa Ysabel Indian Reservation.

(d) Hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) Determine and seek damages for violation of this Ordinance;

(g) Publish notices and, in the case of any Chairman designee(s), make such reports to the Legislature as may be appropriate;

(h) Collect sales taxes and fees levied or set by the Chairman on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts;

(i) Take or facilitate all action necessary to follow or implement applicable provisions of State Law as required;

(j) Cooperate with appropriate State of California authorities for purposes of prosecution of any violation of any criminal law of the State of California; and

(k) Exercise such other powers as may be necessary and appropriate, and in the case of any Chairman designee(s), delegated from time to time by the Chairman, to implement and enforce this Ordinance.

**Section 5.2.** Limitation on Powers. In the exercise of his powers and duties under this Ordinance, the Chairman, his designee(s), and their employees and agents shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or

(b) Waive the immunity of the Tribe from suit except by express law enacted by the Legislature, such waiver being subject to the following limitations: the waiver must be transaction specific, limited as to scope, duration and beneficiary, include a provision that limits recourse only to specified assets or revenues of the Nation or the Nation's entity, and specify the process and venue for dispute resolution, including applicable law.

**Section 5.3.** Inspection Rights. The public places on or within which liquor is sold or distributed shall be open for inspection by the Chairman or his designee(s) at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant hereto.

## ARTICLE VI—LIQUOR SALES

**Section 6.1.** License Required. No distribution or sales of Liquor shall be made on or within public places within the exterior boundaries of the Santa Ysabel Indian Reservation, except at a duly licensed and authorized Special Event, a Tribal Enterprise, Bar, or Liquor Store located on Tribal Lands.

**Section 6.2.** Sale only on Tribal Land. All liquor sales within the exterior boundaries of the Reservation shall be on Tribal Land, including leases thereon.

**Section 6.3.** Sales for Cash. All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit credit cards or credit cards issued by any financial institution.

**Section 6.4.** Sale For Personal Consumption. Except for sales by Licensed Wholesalers, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subject to exclusion from the Reservation or liability for money damages of up to five hundred dollars ($500), as determined by the Chairman or his designee(s) after notice and an opportunity to be heard.

**Section 6.5.** Compliance Required. All distribution, sale and consumption of liquor within the Law.

## ARTICLE VII—LICENSING

**Section 7.1.** Licensing Procedures. In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor, whether wholesale or retail, within the exterior boundaries of the Santa Ysabel Indian Reservation must apply to the Chairman or his designee(s) for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the Reservation for which no money is requested or paid.

**Section 7.2.** State Licensing. In the event dual Tribal and State licenses are required by State Law, no person shall be allowed or permitted to sell or provide liquor on the Santa Ysabel Indian Reservation unless such person is also licensed by the State of California, as required, to sell or provide such liquor. If any such license from the State is revoked or suspended, any applicable license issued by the Nation shall automatically be revoked or suspended.

**Section 7.3.** Application. Any person applying for a license to sell or provide liquor on the Santa Ysabel Indian Reservation shall complete and submit an application provided for this purpose by the Chairman or his designee(s) and pay such application fee as may be set from time to time by the Chairman for this purpose. An incomplete application will not be considered. The Chairman shall establish licensing procedures and application forms for wholesalers, retailers and special events.

**Section 7.4.** Issuance of License. The Chairman or his designee may issue a license if he believes such issuance is in the best interests of the Nation, the residents of the

Santa Ysabel Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Chairman.

**Section 7.5.** Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

**Section 7.6.** Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California, as required; however, the Chairman or his designee may refuse to renew a license if he finds that doing so would not be in the best interests of the health and safety of the members of the Nation and the other residents of the Santa Ysabel Indian Reservation.

**Section 7.7.** Revocation of License. The Chairman or his designee may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and, to demonstrate why the license should not be suspended or revoked.

**Section 7.8**. Transferability of Licenses. Licenses issued by the Chairman or his designee shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

**ARTICLE VIII—TAXES**

**Section 8.1.** Sales Tax. The Chairman shall have the authority to impose a sales tax on all wholesale and retail liquor sales that take place within the Reservation. Such tax may be implemented by duly promulgated regulation issued by the Chairman or his designee pursuant to this Ordinance. Any tax imposed by authority of this Section shall apply to all retail and wholesale sales of liquor within the Reservation, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

**Section 8.2.** Payment of Taxes to the Nation. All taxes imposed pursuant to this Article VIII shall be paid over to the Nation and be subject to distribution by the Legislature in accordance with its usual appropriation procedures for essential governmental functions and social services, including administration of this Ordinance.

**ARTICLE IX—RULES, REGULATIONS, AND ENFORCEMENT**

**Section 9.1.** Evidence. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish prima facie intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this Ordinance.

**Section 9.2.** Civil Violations. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall have liquor in his/her possession for distribution or resale without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Chairman or his designee. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Nation or other persons located within the Reservation for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Santa Ysabel Indian Reservation shall be governed solely by the laws of the State of California.

**Section 9.3.** Illegal Purchases. Any person within the boundaries of the Santa Ysabel Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

**Section 9.4.** Sale to Intoxicated Person. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

**Section 9.5.** Providing Liquor to Underage Person. No person under the age of twenty-one (21) years shall serve, consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

**Section 9.6.** Selling Liquor to Underage Person. Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

**Section 9.7.** Civil Penalty. Any person guilty of a violation of this Ordinance shall, be liable to pay the Nation the amount of two hundred fifty dollars ($250) per violation as civil damages to defray the Nation's cost of enforcement of this Ordinance. The payment of such damages in each case shall be determined by the Chairman or his designee based upon a preponderance of the evidence available to it after the person alleged to have violated this Ordinance has been given notice, hearing and an opportunity to respond to such allegations.

**Section 9.8.** Identification Requirement. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27), the prospective purchaser shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Drivers license of any state or identification card issued by any state Department of Motor Vehicles;

(2) United States Uniformed Services identification documents;

(3) Passport; or

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

**ARTICLE X—ABATEMENT**

**Section 10.1.** Public Nuisance Established. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

**Section 10.2.** Abatement of Nuisance. The Chairman shall institute and maintain an action in the Judicial Branch of the Nation, or another court of competent jurisdiction, in the name of the Nation to abate and perpetually enjoin any nuisance declared under this title. Upon establishment of probable cause to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than five thousand dollars ($5,000) payable to the Nation and conditioned that liquor will not be thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereof in violation of the provision of this title or of any other applicable law of the Nation, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this title or other liquor laws of the Nation. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Nation.

**Section 10.3.** Evidence. In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution or sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

**ARTICLE XI—USE OF PROCEEDS**

**Section 11.1.** Application of Proceeds. The gross proceeds collected by the Nation from all Licensing of the sale of alcoholic beverages within the Reservation and from fines imposed as a result of violations of this Ordinance, shall be applied as follows: (a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and (b) Second, the remainder shall be turned over to the General Fund of the Nation and expended by the Legislature for governmental services and programs on the Reservation in accordance with the requirements of the Constitution.

**ARTICLE XII—MISCELLANEOUS PROVISIONS**

**Section 12.1.** Severability and Savings Clause. If any provision or application of this Ordinance is determined by judicial review to be invalid, such provision shall be deemed ineffective and void, but shall not render ineffectual the remaining portions of this Ordinance, which shall remain in full force and effect.

**Section 12.2.** Effective Date. This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Ordinance and publishes the same in the Federal Register.

**Section 12.3.** Repeal of Prior Acts. Any and all prior resolutions, laws, regulations or ordinances pertaining to the subject matter set forth in this Ordinance are hereby rescinded and repealed in their entirety.

**Section 12.4.** Conformance with State Law. All acts and transactions under this Ordinance shall be in conformity with the Compact and the laws of the State of California to the extent required by 18 U.S.C. Sec. 1161 and with all Federal laws regarding alcohol in Indian Country.

**ARTICLE XIII—AMENDMENTS**

This Ordinance may be amended only pursuant to a law duly enacted by the Legislature with certification by the Secretary of the Interior and publication in the Federal Register, if required.

**ARTICLE XIV—SOVEREIGN IMMUNITY**

Nothing contained in this Ordinance is intended to nor does it in any way limit, alter, restrict, or waive the Nation's sovereign immunity from unconsented suit or action.

**ARTICLE XV—SEVERABILITY**

If any provision of this Act is held to be void, or unenforceable, it shall be considered deleted from this Act and the invalidity of such provision shall not affect the validity or enforceability of any other provision which shall be given effect in the absence of the invalid provision. The remaining provisions shall continue in full force and effect without being invalidated.

[FR Doc. 2011–1391 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–4J–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Interim Deputation Agreements; Interim BIA Adult Detention Facility Guidelines

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the online publication of the Interim BIA Adult Detention Facility Guidelines and the Interim Model Deputation Agreements that will be used by the Office of Justice Services following passage of the Tribal Law and Order Act of 2010. Three Interim Model Deputation Agreements will be used: one agreement for tribes in Public Law 83–280 States, one for tribes in Oklahoma, and a general deputation agreement for tribes in other parts of the United States. The documents are published on the Indian Affairs Web site.

**DATES:** These Interim BIA Adult Detention Facility Guidelines and Interim Model Deputation Agreements are effective on January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Charles Addington, Bureau of Indian Affairs, Office of Justice Services, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 208–5787 about the Interim Model Deputation Agreements and Carla Flanagan, Bureau of Indian Affairs, Office of Justice Services, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–1651 about the Interim BIA Adult Detention Facility Guidelines.

**SUPPLEMENTARY INFORMATION:** The Tribal Law and Order Act of 2010 calls for publication of the Model Deputation Agreements and the BIA Adult Detention Facility Guidelines. The documents are being published for interim use on the Indian Affairs Web site at *http://www.bia.gov/WhoWeAre/BIA/OJS/index.htm.* The documents were the subject of tribal consultation in November and December 2010. The Office of Justice Services continues consultation on the Tribal Law and Order Act of 2010 and expects to publish these documents in final form once the consultation ends.

The Interim BIA Adult Detention Facility Guidelines pertain to the operation and maintenance of Indian country detention facilities and other facilities contracted by the Bureau of Indian Affairs to house Indian offenders.

The Interim Model Deputation Agreements provide for the deputation of law enforcement officers employed by tribes, States and subdivisions of States. Deputized officers are authorized to assist the Bureau of Indian Affairs in its duties to provide law enforcement services and to make lawful arrests in Indian country within the jurisdiction of the tribe. Three model Deputation Agreements are necessary because of special jurisdictional considerations in Oklahoma and Public Law 83–280 States.

Dated: January 20, 2011.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2011–1661 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–4J–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Special Law Enforcement Commissions

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the online publication of the Interim Special Law Enforcement Commission Policy, Rules and Procedures, the Interim Special Law Enforcement Commission Protocols and the Interim Domestic Violence Waiver that will be used by the Office of Justice Services following passage of the Tribal Law and Order Act of 2010. The documents are published on the Indian Affairs Web site.

**DATES:** The Interim Special Law Enforcement Commission Policy, Rules and Procedures, the Interim Special Law Enforcement Commission Protocols and the Interim Domestic Violence Waiver are effective on January 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Charles Addington, Bureau of Indian Affairs, Office of Justice Services, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 208–5787.

**SUPPLEMENTARY INFORMATION:** The Tribal Law and Order Act of 2010 calls for publication of the Interim Special Law Enforcement Commission Policy, Rules and Procedures, the Interim Special Law Enforcement Commission Protocols and the Interim Domestic Violence Waiver. The documents are being published for interim use on the Indian Affairs Web site at *http://www.bia.gov/WhoWeAre/BIA/OJS/index.htm.* The documents were the subject of tribal consultation in November and December 2010. The Office of Justice Services continues consultation on the Tribal Law and Order Act of 2010 and expects to publish the documents in final form once the tribal consultation ends.

The documents provide for the deputation of law enforcement officers employed by tribes, States and subdivisions of States. Deputized officers are authorized to assist the Bureau of Indian Affairs in its duties to provide law enforcement services and to make lawful arrests in Indian country within the jurisdiction of the tribe.

Dated: January 20, 2011.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2011–1588 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–4J–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWO220000.L10200000.PH0000.00000000]**

### Renewal of OMB Control Number 1004–0041

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** 60-Day Notice and Request for Comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval to continue the collection of information from applicants for grazing

permits and leases, and from holders of grazing permits and leases. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0041.

**DATES:** Submit comments on the proposed information collection by March 28, 2011.

**ADDRESSES:** Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401–LS, 1849 C St., NW., Washington, DC 20240.

Fax: to Jean Sonneman at 202–912–7102.

Electronic mail: *Jean_Sonneman@blm.gov.*

Please indicate "Attn: 1004–0041" regardless of the form of your comments.

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request, contact Kimberly Hackett, Division of Rangeland Resources, at 202–912–7216. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Ms. Hackett.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM will be submitting to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

The following information is provided for the information collection:

*Title:* Authorizing Grazing Use (43 CFR subparts 4110 and 4130).

Forms:

- Form 4130–1, Grazing Schedule, Grazing Application;
- Form 4130–1a, Grazing Preference Application and Preference Application (Base Property Preference Attachment and Assignment);
- Form 4130–1b, Grazing Application Supplemental Information;
- Form 4130–3a, Automated Grazing Application;
- Form 4130–4, Application for Exchange-of-Use Grazing Agreement; and
- Form 4130–5, Actual Grazing Use Report.

*OMB Control Number:* 1004–0041.

*Abstract:* The Taylor Grazing Act (43 U.S.C. 315–315n) and Subchapters III and IV of the Federal Land Policy and Management Act (43 U.S.C. 1731–1753) authorize the BLM to manage domestic livestock grazing on public lands consistent with land use plans, the principles of multiple use and sustained yield, environmental values, economic considerations, and other relevant factors. In order to meet those goals, it is necessary to collect information on matters such as permittee and lessee qualifications for a grazing permit or lease, base property used in conjunction with public lands, and the actual use made by livestock authorized to graze on the public lands.

*Frequency of Collection:* The BLM collects the information on Forms 4130–1, 4130–1a, 4130–1b, and 4130–4 on occasion, and collects the information on Forms 4130–3a and 4130–5 annually. Responses are required in order to obtain or retain a benefit.

*Estimated Number and Description of Respondents:* Any U.S. citizen or validly licensed business may apply for a BLM grazing permit or lease. The BLM administers nearly 18,000 permits and leases for grazing domestic livestock, mostly cattle and sheep, at least part of the year on public lands. Permits and leases generally cover a 10-year period and are renewable if the BLM determines that the terms and conditions of the expiring permit or lease are being met.

*Estimated Reporting and Recordkeeping "Hour" Burden:* 33,810 responses and 7,886 hours annually. The following table details the individual components and respective hour burdens of this information collection request:

| A. Type of response | B. Number of responses | C. Time per response (min) | D. Total hours (B × C) |
|---|---|---|---|
| Grazing Schedule—Grazing Application (43 CFR 4130.1–1) Form 4130–1 | 3,000 | 15 | 750 |
| Grazing Preference Application and Preference Transfer Application (Base Property Preference Attachment and Assignment) (43 CFR 4110.1(c), 4110.2–1(c), and 4110.2–3) Form 4130–1a and related nonform information | 900 | 40 | 600 |
| Grazing Application Supplemental Information (43 CFR 4110.1 and 4130.7) Form 4130–1b | 900 | 30 | 450 |
| Automated Grazing Application (43 CFR 4130.4) Form 4130–3a | 14,000 | 10 | 2,333 |
| Application for Exchange-of-Use Grazing Agreement (43 CFR 4130.6–1) Form 4130–4 | 10 | 18 | 3 |
| Actual Grazing Use Report (43 CFR 4130.3–2(d) Form 4130–5 | 15,000 | 15 | 3,750 |
| Totals | 33,810 | | 7,886 |

Before including your address, telephone number, e-mail address, or other personal identifying information in your comments, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Jean Sonneman,**

*Bureau of Land Management, Acting Information Collection Clearance Officer.*

[FR Doc. 2011–1454 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMF01000–L51010000–ER0000–LVRWG10G0760; NMNM122352]**

### Notice of Intent to Prepare an Environmental Impact Statement for the Proposed San Juan Basin Energy Connect Project, San Juan County, New Mexico, and La Plata County, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Farmington Field Office, Farmington, New Mexico, intends to prepare an Environmental Impact Statement (EIS) on the proposed San Juan Energy Connect Project, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the EIS. Comments must be received in writing by the BLM on or before March 11, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/nm/farmington.* In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments related to the San Juan Basin Energy Connect Project by any of the following methods:

- *Web site: http://www.sjbenergyconnect.com;*
- *E-mail: info@sjbenergyconnect.com;* or
- *Mail:* Bureau of Land Management, Farmington Field Office, Attention: San Juan Basin Energy Connect Project Manager, 1235 La Plata Highway Suite A, Farmington, New Mexico 87401.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to the mailing list, contact Marcy Romero, Project Manager, telephone 505–599–6339; address 1235 La Plata Highway Suite A, Farmington, New Mexico 87401; e-mail *marcella_romero@blm.gov*.

**SUPPLEMENTARY INFORMATION:** The applicant, Tri-State has requested a right-of-way (ROW) authorization to construct, operate, and maintain a 230 kilovolt (kV) transmission line from the Farmington, New Mexico area to Ignacio, Colorado. The San Juan Basin Energy Connect Project is generally located between Townships 30 and 33 North, Ranges 16 through 7 West, New Mexico Principal Meridian, San Juan County, New Mexico, and La Plata County, Colorado. The project area extends from within 1 mile of Farmington, New Mexico, and within 3 miles of the Navajo Nation, to within 5 miles of Durango, Colorado. The project area covers approximately 174,096 acres of mixed Federal, State, Tribal and private lands. The BLM Farmington Field Office and Bureau of Indian Affairs manage the Federal lands in the project area.

The proposed project would entail the expansion of the existing Shiprock Substation to accommodate the new 230 kV line termination and installation of additional 345/230 kV transformation equipment. The construction involves approximately 35–40 miles of new double-circuit 230 kV transmission line from the existing Shiprock Substation to the proposed Kiffen Canyon Substation near the City of Farmington's Glade Switching Station. It is proposed that approximately 45–50 miles of new double and single-circuit 230 kV transmission line would be constructed between the proposed Kiffen Canyon Substation and the proposed Iron Horse Substation near Ignacio, Colorado. In addition to transmission facilities, traditional vehicle access to these new electrical facilities would be needed. New access would be minimized by using existing access whenever possible. The BLM Farmington Field Office will serve as the lead agency for the NEPA analysis process and preparation of the EIS. Cooperating agencies identified at this time include the Bureau of Indian Affairs, Southern Ute Indian Tribe, Rural Utilities Service, and Western Area Power Administration. The proposed action is in conformance with the Farmington Resource Management Plan and Record of Decision dated December 2003. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. The EIS for the San Juan Basin Energy Connect Project will analyze the environmental consequences of implementing the proposed action and alternatives to the proposed action, including a No Action Alternative. The BLM encourages the public to send comments concerning the project as proposed; other feasible alternative locations; possible mitigation measures; and any other information relevant to the proposed action. Other alternatives that may be considered in detail include additional alignments.

The BLM initiated scoping for this project in public meetings held in Farmington, New Mexico, and Ignacio, Colorado, on October 7 and 8, 2009, respectively. Public input suggested that an EIS level analysis would be more appropriate than the proposed Environmental Assessment (EA). At that time, the proposed action was discussed as being a combination of 48 corridors identified by a Macro Corridor Study, completed prior to the initiation of the NEPA process. Public notices and direct mailings were used to inform those potentially affected or interested in the proposal and information was also available on the project Web site (*http://www.SJBEnergyConnect.com*). In addition to accepting comments at the workshops, BLM invited interested individuals to submit their comments using the project Web site, e-mail, U.S. Postal Service, a dedicated 1–800 hotline, or fax.

Scoping for the EA yielded 232 separate comments from 91 individuals. In addition to highlighting the need to develop an EIS, scoping identified key preliminary issues that will be used in the development and analysis of the alternatives. These issues include:

- Proximity of the transmission line to residences;
- Land use;
- Impacts to visual resources;
- Health and safety concerns; and
- Impacts related to noise.

The BLM will provide additional opportunities for public participation through scoping meetings and the opportunity to submit comments during the scoping period. The BLM will use

and coordinate the NEPA comment process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with policy and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment -including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1501.7.

**Linda S.C. Rundell,**

*State Director.*

[FR Doc. 2011–1453 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–VB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNM940000L1220000.XH0000]**

### Notice of Filing of Plats of Survey, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of Plats of Survey.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by e-mail at *Marcella_Montoya@nm.blm.gov,* for assistance.

**SUPPLEMENTARY INFORMATION:**

**New Mexico Principal Meridian, New Mexico (NM)**

The plat, representing the dependent resurvey and survey, in Township 8 North, Range 18 West, of the New Mexico Principal Meridian, accepted July 15, 2010, for Group 1105 NM.

The plat, representing the dependent resurvey and survey, in Township 5 South, Range 16 East, of the New Mexico Principal Meridian, accepted September 29, 2010, for Group 957 NM.

The plat, in two sheets, representing the dependent resurvey and survey, in Township 30 North, Range 21 West, of the New Mexico Principal Meridian, accepted September 30, 2010, for Group 1113 NM.

The supplemental plat, for Township 29 North, Range 13 East, of the New Mexico Principal Meridian accepted August 25, 2010.

The plat, representing the dependent resurvey and survey, of Antoine Leroux Grant, of the New Mexico Principal Meridian accepted August 25, 2010, for Group 1086 NM.

The plat, in two sheets, representing the dependent resurvey and survey, in Township 8 North, Range 4 East, of the New Mexico Principal Meridian, accepted October 18, 2010, for Group 1114 NM.

**Indian Meridian, Oklahoma (OK)**

The plat, representing the dependent resurvey and survey in Township 26 North, Range 25 East, of the Indian Meridian, accepted May 26, 2010, for Group 179 OK.

The plat, representing the dependent resurvey and survey in Township 20 North, Range 5 East, of the Indian Meridian, accepted August 19, 2010, for Group 186 OK.

The plat, representing the dependent resurvey and survey in Township 4 South, Range 2 West, of the Indian Meridian, accepted September 27, 2010, for Group 192 OK.

The plat, representing the dependent resurvey and survey in Township 12 North, Range 17 West, of the Indian Meridian, accepted October 6, 2010, for Group 188 OK.

The plat, in four sheets, representing the dependent resurvey and survey in Township 10 North, Range 24 East, of the Indian Meridian, accepted July 22, 2010, for Group 61 OK.

The plat, representing the dependent resurvey and survey in Township 18 North, Range 20 East, of the Indian Meridian, accepted November 19, 2010, for Group 189 OK.

**Sixth Principal Meridian, Kansas (KS)**

The plat, representing the dependent resurvey and survey, in Township 9 South, Range 14 East, of the Sixth Principal Meridian, accepted September 27, 2010, for Group 33 KS.

The plat, representing the dependent resurvey and survey, in Township 35 South, Range 25 East, of the Sixth Principal Meridian, accepted November 19, 2010, for Group 29 KS.

If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plat is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been addressed.

If a protest against a survey, as shown on any of the above plats, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

**Robert A. Casias,**

*Deputy State Director of Cadastral Survey/ GeoSciences.*

[FR Doc. 2011–1442 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMTB07900 09 L10100000.PH0000 LXAMANMS0000]**

### Notice of Public Meeting; Western Montana Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held February 24, 2011, beginning at 9 a.m. with a 30-minute public comment period and will adjourn at 3 p.m.

**ADDRESSES:** The meeting will be in the Bureau of Land Management Butte Field Office (106 North Parkmont) in Butte, Montana.

**SUPPLEMENTARY INFORMATION:** This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon several topics, including: An update from the Mountain States Transmission Intertie (MSTI) subgroup, and reports from the Butte, Missoula and Dillon field offices.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

**FOR FURTHER INFORMATON CONTACT:** David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

**Richard M. Hotaling,**

*District Manager, Western Montana District.*

[FR Doc. 2011–1443 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNM930000 L12200000.PM0000]**

### Notice of Temporary Closure of Caves With Significant Bat Resources on Public Lands in New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** Notice is hereby given that a temporary closure of caves and abandoned mines (sites) with significant bat resources is in effect on public lands administered by the Bureau of Land Management (BLM) New Mexico to reduce the risk of mortality to bat populations from white-nosed syndrome.

**DATES:** This closure will be in effect from January 25, 2011 and not to exceed January 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Roger Jaggers, BLM New Mexico State Office Outdoor Recreation Planner, by phone at (505) 954–2184 or by mail at P.O. Box 27115, Santa Fe, New Mexico 87502–0115. 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, seven days a week, to leave a message or question with the above individual. A reply would be received during normal business hours.

**SUPPLEMENTARY INFORMATION:** This closure affects the following sites with significant bat resources on lands administered by the respective offices of the BLM: Billy the Kid, Dry, Endless, McKittrick, Rusty Hinge, Sand, Adobe, and Yellowjacket caves administered by the Carlsbad Field Office; Geronimo, U–Bar and Lepto Splat caves administered by Las Cruces District Office; Pronoun Cave Complex administered by the Rio Puerco Field Office; Bat Hole, Big-eared, Corn Sinkhole, Crockett's, Crystal, Feather, Fly, Fort Stanton, Malpais Madness, Smiley, Sun Spot, Torgac's, Torgac's Annex, Tres Niños caves, and Martin-Antelope Gyp Cave Complex administered by the Roswell Field Office, and Ladrone Cave administered by the Socorro Field Office. Because of the provisions of the Federal Cave Resource Protection Act of 1988, legal descriptions of these sites are not presented in this notice. Additional information on each affected site is available at the respective BLM offices listed above. In addition to the sites identified above for immediate closure, and under the same conditions and stipulations, the BLM may target and close other sites with significant bat resources to public entry. Criteria and rationale used to identify, select, and close all sites is presented in the White-Nose Syndrome Interagency Response Plan for New Mexico (November 2010). A copy of this response plan is available to the public by contacting Roger Jaggers, BLM New Mexico State Office Outdoor Recreation Planner, by phone at (505) 954–2184 or by mail at P.O. Box 27115, Santa Fe, New Mexico 87502–0115. This temporary closure is necessary to reduce the risk of mortality to bat populations from the spread of white-nosed syndrome, a disease responsible for the mortality of over a million hibernating bats in North America. First observed in the State of New York in 2006, the fungus associated with white-nosed syndrome has been documented as far west as Oklahoma. Scientific data indicates that fungal spores associated with the disease may be spread inadvertently among bat hibernation sites by humans, their clothing, or caving gear.

To inform the public, sites identified for closure would be: (1) Signed and posted in the local BLM office having jurisdiction over the lands to which the order applies; and (2) Posted at places near or at the area to which the closure applies and in such manner and location as is reasonable to bring the closure to the attention of users.

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 close the sites identified above to physical entry. The location and amount of public land identified for closure is limited to each site and those lands immediately surrounding the point of entry. Exemptions will be granted for persons conducting search and rescue operations; approved white-nosed syndrome-related monitoring, research, or surveys; underground abandoned mine surveys and closures; and those authorized for activities granted by applicable mining laws. At a minimum, the BLM offices will require decontamination procedures to be followed by all exempted parties.

Any person who violates the closure order 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 by 18 U.S.C. 3571.

**Authority:** 43 CFR 8364.1.

**William Merhege,**

*Acting State Director.*

[FR Doc. 2011–1451 Filed 1–24–11; 8:45 am]

**BILLING CODE 4310–FB–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–644]**

### In the Matter of Certain Composite Wear Components and Welding Products Containing Same; Notice of Commission Determination to Temporarily Rescind Its Limited Exclusion Order and Cease and Desist Order Entered on November 24, 2009 Pending Resolution of Federal Circuit Appeal

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to temporarily rescind its exclusion order

and cease and desist order entered on November 24, 2009 against respondents AIA Engineering Limited and Vega Industries Ltd. ("AIA") in the subject investigation, pending resolution of the validity of United States Patent No. RE39,998 by the United States Court of Appeals for the Federal Circuit.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 21, 2008, based on a complaint filed by Magotteaux International S/A and Magotteaux Inc. ("Magotteaux"). 73 FR 22431 (Apr. 25, 2008). The complaint, as supplemented, alleged 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, or the sale within the United States after importation of certain composite wear components and products containing the same that infringe certain claims of U.S. Patent No. RE39,998. The complaint named Fonderie Acciaiere Rioale S.P.A. ("FAR") and AIA as respondents. FAR was subsequently terminated from the investigation on the basis of a settlement agreement, leaving AIA as the remaining respondent.

On November 24, 2009, the Commission issued a limited exclusion order and a cease and desist order against AIA, who was found by the ALJ to be in default. The limited exclusion order prohibits the unlicensed entry for consumption of composite wear components and products containing the same that are covered by one or more of claims 12–13 and 16–21 of the '998 patent and that are manufactured abroad by or on behalf of, or are imported by or on behalf of, AIA or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. 74 FR 62814 (Dec. 1, 2009). The cease and desist order covers products that infringe claims 12–13 and 16–21 of the '998 patent and is directed to domestic respondent Vega Industries and any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled and majority owned business entities, successors, and assigns. *Id.*

On September 3, 2010, the '998 patent was declared invalid by the District Court for the Middle District of Tennessee in a declaratory judgment action filed by AIA against Magotteaux. On September 28, 2010, Magotteaux noticed an appeal of the district court's decision to the Court of Appeals for the Federal Circuit. On October 5, 2010, AIA filed a petition under 19 U.S.C. 1337(k) and 19 CFR 210.76 asking the Commission to rescind its November 24, 2009 exclusion order and cease and desist order in light of the district court's holding invalidating the '998 patent. Complainant Magotteaux opposed the petition on October 15, 2010 and requested that the Commission hold a public hearing. The Commission investigative attorney did not file a formal response, but did provide copies of certain Commission opinions referenced by Magotteaux in its opposition that were unavailable to the parties via the Commission's EDIS database. On October 21, 2010, Magotteaux filed a motion for leave to supplement its October 15, 2010 response. On October 27, 2010, AIA filed a motion for leave to file a reply to Magotteaux's response and supplement response. On November 1, 2010, the Commission granted both motions for leave. On November 11, 2010, Magotteaux moved for leave to file a sur-reply in response to AIA's Reply. On November 19, 2010, AIA opposed the motion. On November 29, 2009, the Commission granted Magotteaux's motion for leave to file a sur-reply, but indicated that no further briefing was expected.

After consideration of the petition and the responses and replies thereto, the Commission has determined to temporarily rescind its limited exclusion order and cease and desist order entered on November 24, 2009 against AIA pending resolution on appeal of the district court's decision by the Federal Circuit. The Commission's remedial orders will become permanently rescinded if the Federal Circuit affirms the district court's judgment with respect to claims 12–13 and 16–21 of the '998 patent, *i.e.,* the claims covered by the Commission's remedial orders, and will be reinstated if the Federal Circuit reverses the district court's judgment with respect to those claims. The Commission has determined to deny Magotteaux's request for a public hearing.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.76(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.76(b)).

By order of the Commission.

Issued: January 18, 2011.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2011–1421 Filed 1–24–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–742]**

### Certain Digital Televisions And Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 5) of the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint and notice of the investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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.*

**SUPPLEMENTARY INFORMATION:** On October 18, 2010, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by LG Electronics, Inc. of Seoul, Korea ("LG") alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain digital televisions and components thereof by reason of infringement of certain claims of U.S. Patent No. RE 37,070; U.S. Patent No. 6,785,906; and U.S. Patent No. 6,598,233. 75 FR 63857 (Oct. 18, 2010). Complainant LG named Vizio, Inc. of Irvine, California, AmTRAN Technology Co., Ltd. of Taipei, Taiwan and AmTRAN Logistic, Inc. of Irvine, California as respondents.

On November 16, 2010, complainant moved to amend the complaint and notice of the investigation to include allegations of patent infringement relating to claims 29, 35, and 40 of U.S. Patent No. RE 37,326.

On December 23, 2010, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of the investigation. No party petitioned for review of the subject ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: January 19, 2011.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2011–1428 Filed 1–24–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–683]**

### In the Matter of Certain MLC Flash Memory Devices and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in Its Entirety Based on a Settlement Agreement; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 29) granting a joint motion to terminate the investigation in its entirety based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 7908–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on August 27, 2009, based on a complaint filed by BTG International, Inc. of West Conshohocken, Pennsylvania ("BTG"). 74 FR 43723–4 (August 27, 2009). The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain MLC flash memory devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,394,362; 5,764,571; 5,872,735; 6,104,640; and 6,118,692. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Samsung Electronics Co., Ltd, Samsung Electronics America, Inc., Samsung Semiconductor, Inc., Samsung Telecommunications America, LLC (collectively "Samsung"); Apple, Inc., ASUStek Computer, Inc., ASUS Computer International, Dell, Inc., Lenovo (Singapore) Pte. Ltd, Lenovo (United States) Inc., PNY Technologies, Inc., Sony Corporation, Sony Electronics, Inc., Transcend Information, Inc. (all collectively "Covington Respondents"); Research in Motion Corporation and Research in Motion, Ltd. of Ontario, Canada (collectively "RIM Respondents") as respondents.

On December 20, 2010, BTG, Samsung, and the Covington Respondents filed a joint motion to terminate the investigation as to all respondents on the basis of a settlement agreement between BTG and Samsung, which effectively resolves the dispute between BTG and all Respondents in the investigation. On December 22, 2010, BTG and the Covington Respondents filed an amendment and correction to the joint motion to terminate. On December 23, 2010, the Commission investigative attorney filed a response in support of the motion. No other responses were received.

On January 3, 2011, the ALJ issued the subject ID granting the joint motion to terminate the investigation in its entirety pursuant to Commission Rule 210.21(b). No petitions for review of the subject ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: January 19, 2011.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2011–1419 Filed 1–24–11; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OMB Number 1121–0234]**

### Office of Justice Programs; Agency Information Collection Activities; Proposed Collection; Comment Requested

**ACTION:** 30-Day Notice of Information Collection under Review: Extension of a Currently Approved Collection, Requirements Data Collection Application for the Juvenile Accountability Incentive, Block Grants Program.

The Department of Justice, Office of Justice Programs 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. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 221, page 70290–70291, on November 17, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 24, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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: DOJ Desk Officer, Fax: 202 395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number [1121–0234]. Also include the DOJ docket number found in brackets in the heading of this document.

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:

**Type of Information Collection**

(1) Extension of a Currently Approved Collection.

(2) Title of the Forms/Collection: Requirements Data Collection Application for the Juvenile Accountability. Incentive Block Grants Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: N/A.

(4) Affected public who will be asked or required to respond are: Prosecutors, Law Enforcement Officials, and Forensic Laboratory personnel from agencies within the jurisdiction represented by the grantees.

The National Institute of Justice uses this information to assess the impacts and cost-effectiveness of the Forensic Casework DNA Backlog Programs over time and to diagnose performance problems in current casework programs. This evaluation will help decision makers be better informed to not only diagnose program performance problems, but also to better understand whether the benefits of DNA collection and testing is in fact an effective public safety and crime control practice.

(1) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is broken down as follows:

Law Enforcement—200 respondents, average burden time 120 minutes—*400 hours total.*

Prosecutors—200 respondents, average burden time 90 minutes—*300 hours total.*

Lab personnel—135 respondents average burden 120 minutes—*270 hours total.*

(2) An estimate of the total public burden (in hours) associated with the collection:

The estimated total public burden associated with this collection is 970 hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: January 19, 2011.

**Lynn Murray,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 2011–1446 Filed 1–24–11; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Continuation of Death Benefit for Student

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) hereby announces submission of the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, "Application for Continuation of Death Benefit for Student," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

**DATES:** Submit comments on or before February 24, 2011.

**ADDRESSES:** A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** Form LS–266 is used by the OWCP as an

application for continuation of death benefits for a dependent who is a student. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0026. The current OMB approval is scheduled to expire on January 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 29, 2010 (75 FR 60141).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1240–0026. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* Office of Workers' Compensation Programs (OWCP).

*Title of Collection:* Application for Continuation of Death Benefit for Student.

*OMB Control Number:* 1240–0026.

*Affected Public:* Individuals or households.

*Total Estimated Number of Respondents:* 44.

*Total Estimated Number of Responses:* 44.

*Total Estimated Annual Burden Hours:* 22.

*Total Estimated Annual Costs Burden:* $21.

Dated: January 19, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011–1425 Filed 1–24–11; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Enrollment Opportunity Notice Relating to Extension of Dependent Coverage

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) hereby announces the submission of the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Affordable Care Act Enrollment Opportunity Notice Relating to Extension of Dependent Coverage," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

**DATES:** Submit comments on or before February 24, 2011.

**ADDRESSES:** A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The Department's Interim Final Regulation under the Patient Protection and Affordable Care Act requires group health plans to provide a notice of an enrollment opportunity to individuals whose coverage ended, or who were denied coverage (or were not eligible for coverage) under a group health plan or group health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26. The enrollment opportunity must continue for at least 30 days, regardless of whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity must be presented not later than the first day of the first plan year (or, in the individual market, policy year) beginning on or after September 23, 2010, which is the applicability date of Public Health Service Act section 2714. Coverage must begin not later than the first day of the first plan year (or policy year in the individual market) beginning on or after September 23, 2010.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0139. The current OMB approval is scheduled to expire on February 28, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 30, 2010 (75 FR 60482).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of

this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1210–0139. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employee Benefits Security Administration (EBSA).

*Title of Collection:* Affordable Care Act Enrollment Opportunity Notice Relating to Extension of Dependent Coverage.

*OMB Control Number:* 1210–0139.

*Affected Public:* Private sector—businesses or other for profits and not for profit institutions.

*Total Estimated Number of Respondents:* 2,800,000.

*Total Estimated Number of Responses:* 79,573,000.

*Total Estimated Annual Burden Hours:* 411,000.

*Total Estimated Annual Costs Burden:* $1,233,500.

Dated: January 19, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011–1465 Filed 1–24–11; 8:45 am]

**BILLING CODE 4510–29–P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meetings; Notice

**DATE AND TIME:** The Legal Services Corporation Board of Directors and its committees will meet on January 28–29, 2011. On Friday, January 28, the first meeting will commence at 8:45 a.m., Eastern Time. On Saturday, January 29, the first meeting will commence at 8:30 a.m., Eastern Time. On each of these two days, each meeting other than the first meeting of the day will commence promptly upon adjournment of the immediately preceding meeting. Please note that on Friday, January 28th, meetings of the Audit Committee and Development Committee will run concurrently after the meeting of the Promotion & Provision for the Delivery of Legal Services Committee; the concurrent meetings will be followed by the Finance Committee meeting.

**LOCATION:** The Legal Services Corporation, F. William McCalpin Conference Center, 3rd Floor, 3333 K Street, NW., Washington, DC 20007.

**PUBLIC OBSERVATION:** Unless otherwise noticed, all meetings of the LSC Board of Directors are open to public observation. Members of the public that are unable to attend but wish to listen to a public proceeding may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

**Call in Directions for Open Sessions**

- Call toll-free number: 1–(866) 451–4981;
- When prompted, enter the following numeric pass code: 5907707348 (or 2755431953 to access the concurrent Development Committee meeting on January 28, 2010);
- When connected to the call, please "MUTE" your telephone immediately.

MEETING SCHEDULE

| | Time [1] |
|---|---|
| FRIDAY, JANUARY 28, 2011: | |
| 1. Promotion & Provision for the Delivery of Legal Services Committee ("Promotion & Provision Committee") | 8:45 a.m. |
| 2. Operations & Regulations Committee. | |
| 3. Audit Committee | 11 a.m. |
| 4. Development Committee | 11 a.m. |
| 5. Finance Committee. | |
| 6. Governance & Performance Review Committee. | |
| SATURDAY, JANUARY 29, 2011: | |
| 1. BOARD OF DIRECTORS | 8:30 a.m. |

**STATUS OF MEETING:** Open, except as noted below.

- *Board of Directors*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC, and to hear briefings from management and LSC's Inspector General.[2]
- *Audit Committee*—Open, except that a portion of the meeting of the Audit Committee may be closed to the public pursuant to a vote of the Board of Directors so the Committee may be briefed on a matter related to the classification of Corporation consultants.

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a) and (g), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

**MATTERS TO BE CONSIDERED:**

[1] Please note that all times in this notice are in the Eastern Time zone.

[2] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

*Friday, January 28, 2011*

**Promotion and Provision for the Delivery of Legal Services Committee**

**Agenda**

**Open Session**

1. Approval of Agenda.
2. Approval of Minutes of the Committee's meeting of October 18, 2010.
3. Consider and act on Committee Charter.
4. Consider and act on client board member support initiatives.
5. Staff report on LSC's Initiatives Regarding Disaster Response.
6. Public comment.
7. Consider and act on other business.
8. Consider and act on adjournment of meeting.

**Operations & Regulations Committee**

**Agenda**

**Open Session**

1. Approval of agenda.
2. Approval of minutes of the Committee's meetings of:
   a. October 19, 2010.
   b. December 15, 2010.
3. Consider and act on strategic planning activities.
   a. Presentation by Mattie Cohan, Senior Assistant General Counsel.
4. Staff report on Development of a Regulatory Agenda.
   a. Presentation by Mattie Cohan.
5. Consider and act on Draft Notice of Potential Rulemaking on 45 CFR Part 1609 to clarify scope of fee-generating case restrictions to non-LSC fund supported cases.
   a. Presentation by Mattie Cohan.
   b. Comments by Laurie Tarantowicz, Assistant Inspector General and Legal Counsel.
   c. Public comment.
6. Staff report on Potential Rulemakings as a Result of TIG Audit Response.
   a. Presentation by Mattie Cohan.
7. Public comment.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.

**Audit Committee**

**Agenda**

**Open Session**

1. Approval of agenda.
2. Approval of Minutes of the Committee's Open Session meeting of October 19, 2010.
3. Presentation of the Fiscal Year (FY) 2010 Annual Financial Audit.
   • Ronald "Dutch" Merryman, Assistant Inspector General for Audits.
   • Uzma Malik-Dorman, Thompson, Cobb, Bazilio & Associates.
4. Review of LSC's IRS Form 990 for FY 2010.
   • David Richardson, Treasurer & Comptroller.
5. Report on LSC's 403(b) plan performance.
   • Alice Dickerson, Director of Human Resources.
6. Inspector General briefing.
   • Jeffrey Schanz, Inspector General.
7. Report on the accuracy of grantee data.
   • John Meyer, Director, Office of Information Management.
8. Public comment.
9. Consider and act on other business.

**Closed Session**

10. Briefing on classification of LSC consultants.
    • Mattie Cohan, Senior Assistant General Counsel.
11. Consider and act on adjournment of meeting.

**Development Committee**

**Agenda**

**Open Session**

1. Approval of agenda.
2. Approval of minutes of the Committee's open session telephonic meeting of December 17, 2010.
3. Consider and act on continued discussion of Committee's objectives for the year.
4. Consider and act on other business.
5. Public comment.
6. Consider and act on adjournment of meeting.

**Finance Committee**

**Agenda**

**Open Session**

1. Approval of agenda.
2. Approval of Minutes of the Committee's Open Session meeting of October 19, 2010.
3. Consider and act on a Revised Temporary Operating Budget for Fiscal Year (FY) 2011, Resolution 2011–0XX.
   • Presentation by David Richardson, Treasurer & Comptroller.
4. Presentation on LSC's Financial Reports for the first two months of FY 2011.
   • Presentation by David Richardson.
5. Staff report on the FY 2011 appropriations.
   • Presentation by John Constance, Director, Office of Government Relations & Public Affairs.
6. Staff report on submission of FY 2012 budget request.
   • Presentation by John Constance.
7. Public comment.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.

**Governance and Performance Review Committee**

**Agenda**

**Open Session**

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of October 18, 2010.
3. Committee Chairman's report on:
   a. Results of Board and Committee Self Evaluation process for 2010.
   b. Consider and act on report to full Board on Board and Committee Self Evaluation results.
4. Staff report on progress on implementation of GAO recommendations.
5. Consider and act on a proposal to amend the Governance and Performance Review Charter to include all officers of the corporation under the evaluation jurisdiction of the Committee.
6. Consider and act on nature and timing of IG Evaluation.
7. IG Evaluation discussion for 2010.
8. Consider and act on other business.
9. Public comment.
10. Consider and act on motion to adjourn meeting.

*Saturday, January 29, 2011*

**Board of Directors**

**Agenda**

**Open Session**

1. Pledge of Allegiance.
2. Approval of agenda.
3. Approval of Minutes of the Board's Open Session Telephonic meeting of October 19, 2010.
4. Approval of Minutes of the Board's Open Session Telephonic meeting of November 23, 2010.
5. Approval of Minutes of the Board's Open Session Telephonic meeting of January 3, 2011.
6. Consider and act on nominations for the Chairman of the Board of Directors.
7. Consider and act on nominations for the Vice Chairman of the Board of Directors.
8. Consider and act on delegation to the Chairman of standing authority to make committee assignments and appoint Directors and non-voting Non-Directors to committees.
9. Consider and act on Resolution 2011–XXX thanking Victor M. Fortuno for his service as LSC President.
10. Introduction of new LSC President James Sandman.
11. Consider and act on Resolutions 2011–XXXa–e thanking Advisory

Members for their participation on the 2010 Search Committee for LSC President.

12. Consider and act on Resolution 2011–XXX dissolving the 2010 Search Committee for LSC President.

13. Consider and act on Resolution 2011–XXX Commemorating the 100 Year Anniversary of the National Legal Aid & Defender Association and its contributions to the legal services community.

14. Chairman's Report.

15. Members' Reports.

16. President's Report.

17. Inspector General's Report.

18. Presentation by members of the African American Project Directors Association.

- Lillian Johnson, Community Legal Services of AZ.
- Donald Isaac, Florida Rural Legal Services.
- Wilhelm Joseph, Legal Aid Bureau of Maryland.
- Ben Obregon, Client Board Representative of Legal Action of Wisconsin.

19. Briefing on how the diminished availability of IOLTA funds has affected the delivery of civil legal services.

- Betty Balli Torres, Executive Director, National Association of IOLTA Programs & Chair, Texas Access to Justice Foundation.

20. Consider and act on the report of the Promotion & Provision for the Delivery of Legal Services Committee.

21. Consider and act on the report of the Finance Committee.

22. Consider and act on the report of the Audit Committee.

23. Consider and act on the report of the Operations & Regulations Committee.

24. Consider and act on the report of the Governance & Performance Review Committee.

25. Consider and act on the report of the Development Committee.

26. Consider and act on the report of the Special Taskforce on Fiscal Oversight.

27. Public comment.

28. Consider and act on other business.

29. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

**Closed Session**

30. Approval of Minutes of the Board's Closed Session Telephonic meeting of October 19, 2010.

31. Approval of Minutes of the Board's Closed Session Telephonic meeting of November 5, 2010.

32. Approval of Minutes of the Board's Closed Session Telephonic meeting of November 23, 2010.

33. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

34. Briefing by Management.

35. Briefing by the Inspector General.

36. Consider and act on motion to adjourn meeting.

**CONTACT PERSON FOR INFORMATION:** Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: January 20, 2011.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 2011–1563 Filed 1–21–11; 11:15 am]

**BILLING CODE 7050–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (11–011)]**

### NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting.

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council.

**DATES:** Monday, February 7, 2011, 9 a.m.–12:15 p.m. and 1:15–5 p.m. EST.; Tuesday, February 8, 2011, 9 a.m.–11:15 a.m. EST.

**ADDRESSES:** NASA Headquarters, Room 8D48, 300 E Street, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Charlene Williams, Office of the Chief Financial Officer. (OCFO), National Aeronautics and Space Administration Headquarters, Washington, DC 20546. *Phone:* 202–358–2183, *fax:* 202–358–4336.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

- Review of FY2010 Financial Statement Audit and Roadmap to Unqualified Opinion in FY 2011.
- Chief Financial Officer Update and Review of OCFO Responsibilities.
- Financial Steering Group.
- Unfunded Environmental Liabilities.
- Earned Value Management.
- NASA Shared Services Center.
- Continuous Monitoring Program.
- Monthly Business and Accounting Report.
- Budget Reporting.
- Space Shuttle Program.
- Constellation Program.
- SAP Accounting System.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the Audit, Finance, and Analysis Committee meeting in room 8D48 before receiving an access badge. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. social Security Number (if applicable), and place and date of entry into the U.S., fax to Charlene Williams, Executive Secretary, Audit, Finance, and Analysis Committee, FAX (202) 358–4336, by no later than February 1, 2011. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Charlene Williams at (202) 358–2183, or *fax:* (202) 358–4336.

Dated: January 20, 2011.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2011–1529 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 24, 2011. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant*: R. Natalie P. Goodall, Sarmiento 44, 9410 Ushuaia, Tierra del Fuego, ARGENTINA.

*Permit Application No.* 2011–024.

**Activity for Which Permit Is Requested**

Take. The applicant plans to salvage skeletal remains of seabirds (especially penguins) from the shorelines of South Georgia, the South Shetlands, the Antarctic Peninsula and adjacent islands during visits of scientific, tourist or supply ships, or tourist yachts. The collected samples are very useful in the long-term project, "Aves y Mamiferos Marinos Australes" (AMMA) (study of Southern Marine Mammals and Birds) which have been carried out in Tierra del Fuego since 1976. Skeletons from Antarctic waters are especially useful in comparison with our skeletal collections from southern South America. All collected material will be cleaned, numbered and deposited in the RNP collection, which is housed in the Museo Acatushun de Aves y Mamiferos Marinos Australes at Estancia Harberton, Tierra del Fuego (inaugurated in 2001).

**Location**

South Georgia, the South Shetlands, the Antarctic Peninsula and adjacent islands.

**Dates**

March 1, 2011 to March 1, 2016.

1. *Applicant:* R. Natalie P. Goodall, Sarmiento 44, 410 Ushuaia, Tierra del Fuego, ARGENTINA.

*Permit Application No.* 2011–025.

**Activity for Which Permit Is Requested**

Take. The applicant plans to salvage skeletal remains of mammals (seals, dolphins, porpoises, or beaked whales) from the shorelines of South Georgia, the South Shetlands, the Antarctic Peninsula and adjacent islands during visits of scientific, tourist or supply ships, or tourist yachts. The collected samples are very useful in the long-term project, "Aves y Mamiferos Marinos Australes" (AMMA) (study of Southern Marine Mammals and Birds) which have been carried out in Tierra del Fuego since 1976. Skeletons from Antarctic waters are especially useful in comparison with our skeletal collections from southern South America. All collected material will be cleaned, numbered and deposited in the RNP collection, which is housed in the Museo Acatushun de Aves y Mamiferos Marinos Australes at Estancia Harberton, Tierra del Fuego (inaugurated in 2001).

**Location**

South Georgia, the South Shetlands, the Antarctic Peninsula and adjacent islands.

**Dates**

April 1, 2011 to April 1 2016.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 2011–1406 Filed 1–24–11; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0019]**

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

**I. Background**

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 30, 2010 to January 12, 2011. The last biweekly notice was published on January 11, 2011 (76 FR 1644).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of

publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://*

*www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–0238, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

**Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* May 20, 2010.

*Description of amendment request:* The amendments would revise the Technical Specifications (TSs) to allow the reactor building pressure boundary to be opened under administrative controls.

*Basis for proposed no significant hazards consideration determination:* As required by Title 10 of the Code of Federal Regulations (10 CFR), 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*Criterion 1:*

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes to TS 3.6.10 and TS 3.6.16 have no effect upon accident probabilities or consequences. The changes proposed herein will have no impact upon the Reactor Building or AVS [Annulus Ventilation System] relative to the performance of their design functions. These structures/systems will continue to be available and will function as designed during and following all accidents for which their performance is credited in the plant safety analyses. The proposed administrative controls for TS 3.6.16 will ensure the restoration of the Reactor Building pressure

boundary when required, thereby enhancing nuclear safety. No design changes are being made to the plant itself; therefore, there will be no impact upon the probability of any accident occurring. Since the performance of these systems will not be adversely impacted, there will be no impact upon accident consequences.

*Criterion 2:*

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes to TS 3.6.10 and TS 3.6.16 do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. No design changes are being made to the plant which would result in the introduction of new accident causal mechanisms. The proposed changes do not introduce any new equipment, any change to existing equipment, or any change to the manner in which the plant is operated. No new effects or malfunctions will therefore be created.

*Criterion 3:*

Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes to TS 3.6.10 and TS 3.6.16 maintain the required design margins of the Reactor Building and AVS for all accidents for which their function is assumed. All required General Design Criteria (GDCs) contained in 10 CFR 50, Appendix A, "General Design Criteria for Nuclear Power Plants" will continue to be satisfied following NRC approval of these proposed changes. In addition, margin of safety is related to the confidence in the fission product barriers to function as designed during and following an accident. These barriers include the fuel cladding, the Reactor Coolant System, and the Containment System. The changes proposed in this submittal have no adverse impact upon the performance of any of these barriers to perform their design functions during or following an accident.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

*NRC Branch Chief:* Gloria Kulesa.

**Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* September 16, 2010.

*Description of amendment request:* The amendments would revise Technical Specification 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," to replace the references to the outdated logic per train per doghouse with updated references which reflect the license amendment granted by the U.S. Nuclear Regulatory Commission staff on April 2, 2009.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configurations of the facility. The proposed changes do not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. In review of the discussion above (Section 4.1 Significant Hazards Consideration) it can be concluded the probability or consequences of any accident previously evaluated are not increased. This LAR requests administrative changes only.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This revision will not impact the accident analysis. The proposed changes will not alter the requirements of the ESFAS or its function during accident conditions. No new or different accidents result from the changes proposed. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or any changes in methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analyses assumptions. In review of the discussion above (Section 4.1 Significant Hazards Consideration) it can be concluded that these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. This LAR requests administrative changes only.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. In review of the discussion above (Section 4.1 Significant Hazards Consideration) it can be concluded that the proposed changes do not involve a significant reduction in the margin of safety. This LAR requests administrative changes only.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

*NRC Branch Chief:* Gloria Kulesa.

**Duke Energy Carolinas, LLC, et al., Docket Nos. 50–369, 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina; 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* June 29, 2010.

*Description of amendment request:* The amendments would revise Technical Specification (TS) 3.3.1, "Reactor Trip System (RTS) Instrumentation" and TS 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The specific Technical Specification changes are associated with (1) the specific Allowable Values for various RTS and ESFAS channels, including instrumentation associated with neutron flux, containment pressure, pressurizer pressure, pressurizer water level, reactor coolant flow, reactor coolant pump underfrequency, steam generator water level, turbine impulse pressure, steam line pressure, and reactor coolant temperature; (2) the addition of specific requirements to be taken if an instrument channel setpoint is outside its predefined as-found tolerance; and (3) the addition of specific requirements regarding resetting of an instrument channel setpoint within an as-left tolerance.

The RTS and ESFAS instrumentation is accident mitigation equipment and does not affect the probability of any accident being initiated. In addition, none of the abovementioned proposed Technical

Specification changes affect the probability of any accident being initiated.

The proposed changes to TS Allowable Values are based on methodology that is consistent with the intent of ISA [Instrument Society of America] Standard RP67.04–1994, Part II, "Methodologies for the Determination of Setpoints for Nuclear Safety Related Instrumentation," and will preserve assumptions in the applicable accident analyses. None of the proposed changes alter any assumption previously made in the radiological consequences evaluations, nor do they affect mitigation of the radiological consequences of an accident previously evaluated.

In summary, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of any of the proposed changes. The RTS and ESFAS are not capable by itself of initiating any accident. No physical changes to the overall plant are being proposed. No changes to the overall manner in which the plant is operated are being proposed. The proposed changes do not introduce any new failure modes.

Therefore, none of the proposed changes will create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their intended functions. These barriers include the fuel cladding, the reactor coolant system pressure boundary, and the containment barriers. The proposed changes will not have any impact on these barriers. Plant actuation features and Nominal Trip Setpoints will be unchanged and will actuate prior to exceeding any analytical limits. No accident mitigating equipment will be adversely impacted.

Therefore, existing safety margins will be preserved. None of the proposed changes will involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

*NRC Branch Chief:* Gloria Kulesa.

**Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of amendment request:* October 28, 2010.

*Description of amendment request:* The proposed amendment would modify Clinton Power Station Technical Specifications (TS) Section 3.8.1, "AC Sources Operating," by revising certain Surveillance Requirements (SR) related to the Division 3 alternating current (AC) Sources. The Division 3 AC Sources are independent sources of offsite and onsite AC power primarily dedicated to the High-Pressure Core Spray (HPCS) system. The TS currently prohibit performing the testing required by SR 3.8.1.8 and SR 3.8.1.12 in Modes 1 or 2, and prohibit performing the testing required by SR 3.8.1.11, SR 3.8.1.16, and SR 3.8.1.19 in Modes 1, 2, or 3. The proposed amendment would remove these Mode restrictions and allow all five of the identified SRs to be performed in any operating Mode for the Division 3 AC Sources.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below: EGC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of Amendment," as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The Division 3 (i.e., HPCS) diesel generator (DG) and its associated emergency loads are accident mitigating features, not accident initiators. Therefore, the proposed TS changes to allow the performance of certain Division 3 AC Sources surveillance testing in any plant operating Mode will not significantly impact the probability of any previously evaluated accident.

The design of plant equipment is not being modified by the proposed changes. As such, the ability of the Division 3 AC Sources to respond to a design basis accident will not be adversely impacted by the proposed changes. Testing procedures include steps to ensure that injection into the reactor vessel is precluded. The proposed changes to the TS surveillance testing requirements for the Division 3 AC Sources do not affect the operability requirements for the AC Sources, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the Division 3 AC Sources to perform their required functions of providing emergency power to HPCS system equipment, consistent with the plant safety analyses. Limiting testing to only one AC Source at a time ensures that design basis requirements are met. Should a fault occur while testing the Division 3 AC Sources, there would be no significant impact on any accident consequences since the other two divisional AC Sources and associated emergency loads would be available to provide the minimum safety functions necessary to shut down the unit and maintain it in a safe shutdown condition.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

No changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant operating mode in which the Division 3 AC Sources surveillance testing is conducted. Performance of these surveillances tests while online will continue to verify operability of the Division 3 AC Sources. The proposed amendment does not impact any plant systems that are accident initiators and does not adversely impact any accident mitigating systems.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Margin of safety is related to confidence in the ability of the fission product barriers (fuel cladding, reactor coolant system, and primary containment) to perform their design functions during and following postulated accidents. The proposed changes to the TS surveillance testing requirements for the Division 3 AC Sources do not affect the operability requirements for the AC Sources, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the Division 3 AC Sources to perform their required function of providing emergency power to HPCS system equipment, consistent with the plant safety analyses. Consequently, the performance of the fission product barriers will not be adversely impacted by implementation of the proposed amendment. In addition, the proposed changes do not alter setpoints or limits established or assumed by the accident analysis. Further, performing Division 3 AC Sources surveillance activities online increases the Division 3 DG and HPCS system availability during refueling outages and allows the testing of the Division 3 systems to be conducted when both Division 1 and 2 systems are required to be OPERABLE.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* Robert D. Carlson.

**Florida Power and Light Company (FPL), Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida**

*Date of amendment request:* July 16, 2010.

*Description of amendment request:* The amendments would revise the Technical Specifications (TSs) to adopt Nuclear Regulatory Commission (NRC)-approved Revision 3 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–448, "Control Room Envelope Habitability." The proposed amendments include changes to the TS requirements related to control room envelope (CRE) habitability in TS 3/4.7.5, "Control Room Emergency Ventilation System (CREVS)," and TS Section 6.8, "Administrative Controls—Procedures and Programs." This submittal satisfies the commitment identified in FPL's letter dated August 10, 2007, to adopt the applicable portions of TSTF–448. Additionally, this application updates the original submittal of license amendment request 194 dated September 26, 2008, in response to an NRC request for additional information to remove any reference of unapproved TSTF–508, which has been done.

The NRC staff published a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible amendments adopting TSTF–448, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022). The licensee affirmed the applicability of the following NSHC determination in its application dated July 16, 2010.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

*Criterion 1:* The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Criterion 2:* The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

*Criterion 3:* The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Branch Chief:* Douglas A. Broaddus.

**Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* October 29, 2010.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3.8.4, "DC [Direct Current] Sources—Operating," and TS 3.8.6, "Battery Cell Parameters." Specifically, the proposed changes would replace non-conservative minimum voltages in Surveillance Requirement 3.8.4.1 for the 125 volt direct current (V DC) and 250 V DC essential batteries, and the non-conservative battery specific gravity values listed in TS Table 3.8.6–1, "Battery Cell Parameter Requirements."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Performing surveillances that verify terminal voltage and specific gravity of batteries is not a precursor of any accident previously evaluated. Restoring battery limits to conservative values does not significantly affect the method of performing the surveillances, such that the probability of an accident would be affected. Therefore, the proposed changes do not result in a significant increase in the probability of an accident previously evaluated.

Restoring battery limits to conservative values so that batteries are maintained in

accordance with plant design basis ensures they provide the power assumed in design basis accident mitigation calculations. Therefore, the change does not involve a significant increase in the consequences of an accident previously evaluated.

NPPD [Nebraska Public Power District] concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not involve any modification to the plant or equipment or how they are operated. Therefore, NPPD concludes that these proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change will continue to ensure station batteries are able to perform their design function as assumed in calculations that evaluate their function during design basis accidents. The proposed change actually increases the margin of safety by restoring conservatisms inherent in battery design and manufacturer's recommendations. Based on this, the ability of CNS [Cooper Nuclear Station] to mitigate the design basis accidents that rely on operation of the station batteries is not adversely impacted. Therefore, NPPD concludes that these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

*NRC Branch Chief:* Michael T. Markley.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* July 12, 2010.

*Description of amendment request:* This notice is being reissued in its entirety due to missing statements from the description of the amendment request in the notice published in the **Federal Register** on December 28, 2010 (75 FR 81671). The proposed amendment would modify Item 1 of Table 2–5, "Instrumentation Operating Requirements for Other Safety Feature Functions," of Technical Specification (TS) 2.15, "Instrumentation and Control Systems," to provide new Note (e), and Surveillance Requirement (SR) Items 1 and 2 of Table 3–3, "Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls," of TS 3.1, "Instrumentation and Control," which pertain to operability of the primary and secondary control element assembly (CEA) position indication system (CEAPIS) channels. A new SR is proposed for Item 4 of Table 3–3 of TS 3.1, which will verify the position of CEAs each shift. The proposed amendment will ensure that CEA alignment is maintained during power operations so that the power distribution and reactivity limits defined by the design power peaking and shutdown margin (SDM) limits are preserved. The proposed amendment would also revise TS 2.10.2(7)c regarding actions to be taken when the regulating CEA groups are inserted below the Long Term Insertion Limit. The TS would be revised to require actions to be taken when either time interval is exceeded, which would also make TS 2.10.2(7)c more consistent with Combustion Engineering (CE) Standard Technical Specifications (STS).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment will allow plant operation to continue when a CEAPIS channel is inoperable by requiring prompt verification of CEA positions following CEA movement. CEAs are most likely to become misaligned during movement and therefore, this change will cause CEA alignment errors to be promptly detected and corrected. It is appropriate to clarify that CEAPIS channels are not subject to the requirements of TS 2.15(1), (2), and (3) as they are not designed to be placed in trip or bypass, nor are they engineered safety feature (ESF) or isolation logic subsystems.

The proposed amendment does not alter the requirements of TS 2.15(4) regarding the rod block function of the secondary CEAPIS channel. Should the secondary CEAPIS channel or its rod block function be inoperable, several additional CEA deviation events are possible. However, this situation is already addressed by TS 2.15(4), which requires the CEAs (rods) to be maintained fully withdrawn with the control rod drive system mode switch in the off position except when manual motion of CEA Group 4 is required to control axial power distribution. This is the same position that the CEAs must be in (fully withdrawn) when the plant is at power (Mode 1) in order to utilize distributed control system (DCS) core mimic to CHANNEL CHECK the CEAPIS channels.

If it was not possible to use DCS core mimic to verify the primary CEAPIS channel as would be the case if CEA Group 4 was inserted to control axial power distribution, then the primary CEAPIS channel would be declared inoperable when the CHANNEL CHECK could not be accomplished. The plant would then be placed in hot shutdown (Mode 3) within 12 hours in accordance with TS 2.15(4). Therefore, although the proposed amendment will allow a CEAPIS channel to be inoperable indefinitely, there is no significant increase in the probability or consequences of an accident as the requirements of TS 2.15(4) will continue to be met. This serves to prevent the type of CEA deviation events that the rod block function was designed for.

Replacing the current method of verifying CEAPIS data with the defined term CHANNEL CHECK is an improvement that provides additional flexibility without weakening the intent of the surveillance. As a result, when it is feasible to obtain CEA position indication from DCS core mimic (*i.e.,* when the CEAs are either fully inserted or fully withdrawn), the primary and secondary CEAPIS channels will be compared with DCS core mimic indication as well as each other.

As an additional means of verifying CEA positions, DCS core mimic indication provides added confidence that the CEAs are in the indicated positions. Should the primary or secondary CEAPIS channel become inoperable, the accuracy and reliability of DCS core mimic indication is assured by its previous comparison with both OPERABLE channels. Comparison of the OPERABLE CEAPIS channel with DCS core mimic will satisfy the required CHANNEL CHECK and allow continued operation while the inoperable channel is repaired. The proposed amendment ensures that the CEA alignment required by TS 2.10.2(4) is met each shift by requiring all full length (shutdown and regulating) CEAs to be positioned within 12 inches of all other CEAs in the group.

The change proposed for TS 2.10.2(7)c incorporates more conservative wording to ensure that the regulating CEA groups are maintained within the Long Term Insertion Limit. The proposed change will ensure that corrective actions are taken if either time interval is exceeded and makes TS 2.10.2(7)c more consistent with CE STS.

The proposed amendment does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

As an additional means of verifying primary and secondary CEAPIS data, DCS core mimic indication increases confidence in the reliability of CEAPIS data.

The proposed amendment will help minimize unplanned shutdowns that can

cause plant transients yet continues to ensure that power distribution and reactivity limits are maintained. Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment does not change the design function or operation of the primary or secondary CEAPIS channels. If one CEAPIS channel should become inoperable, the position of CEAs will be verified within 15 minutes of any CEA movement to quickly detect and correct CEA alignment errors. Data from each CEAPIS channel will continue to be compared to the other channel each shift as before. However, a CHANNEL CHECK will require that CEAPIS channel data also be compared with DCS core mimic indication when it is available. Thus, when the CEAPIS channels are required to be OPERABLE, there will be at least two means of verifying the position of CEAs or else appropriate actions must be taken. The CEA alignment required by TS 2.10.2(4) is assured by requiring verification each shift that all full length (shutdown and regulating) CEAs are positioned within 12 inches of all other CEAs in the group.

No changes are proposed to testing and calibration of the CEAPIS channels and these requirements will continue to ensure that they are capable of performing their design function. Use of the defined term CHANNEL CHECK is an appropriate surveillance method as it requires that the channel be compared with other independent channels measuring the same variable where feasible. DCS core mimic is a diverse, accurate and reliable means of verifying CEA positions when the CEAs are fully inserted or fully withdrawn. The change proposed for TS 2.10.2(7)c ensures that appropriate corrective actions are taken when the regulating CEA groups are below the Long Term Insertion Limit in excess of either of the specified time intervals.

No new structures, systems, or components (SSCs) are being installed, and no credible new failure mechanisms, malfunctions, or accident initiators are created. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

When a CEAPIS channel is inoperable, the proposed amendment allows plant operation to continue but requires more frequent verification of CEA positions following any CEA movement, which is when CEAs are most likely to become misaligned. This will enable CEA alignment errors to be detected and corrected more promptly. As CEAPIS channels are not designed to be placed in trip or bypass, nor are they engineered safety feature (ESF) or isolation logic subsystems, it is appropriate to clarify that TS 2.15(1), (2), and (3) do not apply. FCS normally operates with the CEAs fully withdrawn and maintains reactivity control by adjusting reactor coolant system (RCS) boric acid concentration. When the CEAs are fully withdrawn (or fully inserted), DCS core mimic indication provides accurate and reliable indication of CEA positions suitable for comparison with the primary and secondary CEAPIS channels. Thus, even with one CEAPIS channel inoperable, a diverse means of verifying the accuracy of the OPERABLE CEAPIS channel will be available. The accuracy and reliability of DCS core mimic is assured by testing conducted each refueling outage with continued assurance provided by comparison with primary and secondary CEAPIS each shift.

The change also ensures that the CEA alignment required by TS 2.10.2(4) is met each shift by requiring all full length (shutdown and regulating) CEAs to be positioned within 12 inches of all other CEAs in the group. The proposed amendment does not alter the TS 2.15(4) requirement to place the reactor in hot shutdown in the event that both CEAPIS channels are inoperable. The change proposed for TS 2.10.2(7)c incorporates more conservative wording to ensure that the regulating CEA groups are maintained within the Long Term Insertion Limit.

The proposed amendment will help minimize unplanned shutdowns that can cause plant transients yet continues to ensure that power distribution and reactivity limits are maintained. The proposed amendment does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

*NRC Branch Chief:* Michael T. Markley.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* August 16, 2010, as supplemented by letter dated September 27, 2010.

*Description of amendment request:* The proposed amendment would remove the Technical Specification (TS) limiting condition for operation (LCO) 2.15, "Instrumentation and Control Systems," Table 2–5, "Instrumentation Operating Requirements for Other Safety Feature Functions," Items 3, 4, and 5, the associated Notes a, b, c, and d, and the associated footnote, for power-operated relief valve (PORV) and pressurizer safety valve (PSV) acoustic position indication and tail pipe temperature from the Fort Calhoun Station (FCS) TS. The proposed amendment would also revise the surveillance requirement (SR), TS 3.1, "Instrumentation and Control," Table 3–3, "Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls," Items 21, 23, and 24 for PORV Operation and Acoustic Position Indication, Safety Valve Acoustic Position Indication, and PORV/Safety Valve Tail Pipe Temperature, respectively. Specifically, Table 3–3, Item 21 will be revised to reflect the performance of the PORV operation channel functional test on its existing refueling frequency and deletes the monthly frequency denoted in the TS for the acoustic position indication which would also be more aligned with NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants," Revision 3, for PORV operation; and Items 21, 23, and 24 will be revised to relocate the acoustic position indication and tail pipe temperature indication SRs from the FCS TS. In conjunction with the proposed TS changes, operability and surveillance requirements for the acoustic position indication and tail pipe temperature indication instrumentation would be incorporated into the FCS Updated Safety Analysis Report (USAR) and associated plant procedures.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The safety valve acoustic position indication does not affect the operation of its associated spring-loaded safety valve. As such, the proposed change does not increase the probability of an accident. The acoustic monitor and tail pipe temperature indication are only two of the indications used to identify that a safety valve is open. Other indications are available to the operators and alarm in the control room. The acoustic monitor is only one of the indications that the abnormal and emergency procedures direct operators to use to diagnose the opening of a safety valve. The failure of the power operated relief valve (PORV)/safety valve position instrumentation is not assumed to be an initiator of any analyzed event in the Updated Safety Analysis Report (USAR). The proposed changes do not alter

the physical design of the PORVs/safety valves or any other plant structure, system or component (SSC). The changes would remove the PORV/safety valve position indicator operability and surveillance requirements from the Fort Calhoun Station (FCS) Technical Specifications (TS), and incorporate the requirements for this instrumentation into a licensee-controlled document under the control of 10 CFR 50.59.

The proposed changes conform to the Nuclear Regulatory Commission's (NRC's) regulatory guidance regarding the content of plant TS as identified in 10 CFR 50.36 and NRC publication NUREG–1432.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Hence, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The instrumentation is not needed for manual operator actions necessary for safety systems to accomplish their safety function for the design basis accident events. The acoustic position indicator and tail-pipe temperature instrumentation provides only alarm and PORV/safety valve position indication, and does not provide an input to any automatic trip function. Diverse means are available to monitor PORV/safety valve position, and operability and surveillance requirements will be established in a licensee-controlled document to ensure the reliability of the PORV/safety valve position monitoring capability. Changes to these requirements will be subject to the controls of 10 CFR 50.59, providing the appropriate level of regulatory control. In addition, the PORV operation is currently tested on a refueling frequency, which is aligned with the surveillance requirements provided in NUREG–1432.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

*NRC Branch Chief:* Michael T. Markley.

**Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan**

*Date of amendment request:* January 27, 2010.

*Brief description of amendment request:* The amendment revises Section 2.E. of the Palisades Nuclear Plant (PNP) Renewed Facility Operating License to remove the name of the former operator of the plant in the title of the PNP physical security plan and replace it with Entergy Nuclear. The change also removes the security plan revision number and the date the plan was submitted to the Nuclear Regulatory Commission.

*Date of publication of individual notice in* ***Federal Register***: November 18, 2010 (75 FR 70708).

*Expiration date of individual:* January 17, 2011

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

**Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina**

*Date of application of amendments:* May 30, 2008, as supplemented by letters dated October 31, 2008, January 30, 2009, February 9, 2009, February 23, 2009, May 31, 2009, August 3, 2009, September 29, 2009, and November 30, 2009. By letter dated April 14, 2010, the licensee resubmitted the application and superseded the contents of the application submitted by letter dated May 30, 2008, as supplemented October 31, 2008. This resubmitted application, however, does not supersede the supplements dated January 30, 2009, February 9, 2009, February 23, 2009, May 31, 2009, August 3, 2009,

September 29, 2009, and November 30, 2009. By letters dated September 13, 2010, September 27, 2010, October 14, 2010, November 19, 2010, and December 22, 2010, the licensee supplemented the April 14, 2010 application.

*Brief description of amendments:* The amendments revised the licenses and Technical Specifications to allow the licensee to maintain a fire protection program in accordance with 10 CFR 50.48(c) for the Oconee Nuclear Station, Units 1, 2, and 3.

*Date of Issuance:* December 29, 2010.

*Effective date:* As of the date of issuance and shall be fully implemented prior to January 1, 2013.

*Amendment Nos.:* Unit 1—371, Unit 2—373, Unit 3—372.

*Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55:* Amendments revised the licenses and the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** October 28, 2010 (75 FR 66395).

The supplements dated September 13, 2010, September 27, 2010, October 14, 2010, November 19, 2010, and December 22, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 2010.

*No significant hazards consideration comments received:* No.

**Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana**

*Date of amendment request:* July 22, 2010.

*Brief description of amendment:* The amendment revised Limiting Condition for Operation (LCO) 3.10.1, "Inservice Leak and Hydrostatic Testing Operation," and the associated Bases, to expand its scope to include provisions for temperature excursions greater than 200 degrees Fahrenheit as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. The change is consistent with NRC-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–484, "Use of TS 3.10.1 for Scram Time Testing Activities," that was announced in the **Federal Register** on October 27, 2006 (71 FR 63050), as part of the Consolidated Line Item Improvement Process (CLIIP).

*Date of issuance:* January 5, 2011.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 170.

*Facility Operating License No. NPF–47:* The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register***: October 5, 2010 (75 FR 61524).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 2011.

*No significant hazards consideration comments received:* No.

**Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania**

*Date of application for amendment:* March 24, 2010, supplemented by letters dated July 29, 2010, and September 27, 2010.

*Brief description of amendment:* The changes revise the TMI–1 technical specifications to relocate certain surveillance frequencies to a licensee-controlled program through the implementation of Nuclear Energy Institute 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies." The changes are consistent with U.S. Nuclear Regulatory Commission (NRC)-approved Technical Specifications Task Force (TSTF) Standard Technical Specifications change TSTF–425, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specifications Task Force Initiative 5b," Revision 3.

*Date of issuance:* January 12, 2011.

*Effective date:* Immediately, and shall be implemented within 120 days.

*Amendment No.:* 274.

*Facility Operating License No. DPR–50.* Amendment revised the license and the technical specifications.

*Date of initial notice in* ***Federal Register:*** May 18, 2010 (75 FR 27829).

The supplements dated July 29, 2010, and September 27, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 2011.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 13th day of January 2011.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–1480 Filed 1–24–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0263]**

## Draft Regulatory Guide: Comment Period Extension and Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Reissuance and Availability of Draft Regulatory Guide (DG)–1229; Comment Period Extension and Correction.

**FOR FURTHER INFORMATION CONTACT:** Aaron Szabo, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1985 or e-mail: *Aaron.Szabo@nrc.gov*.

**SUMMARY:** On January 13, 2011, the U. S. Nuclear Regulatory Commission (NRC) published a notice in the **Federal Register** (76 FR 2425) announcing the reissuance and availability of Draft Regulatory Guide (DG)–1229, titled "Assuring the Availability of Funds for Decommissioning Nuclear Reactors." This **Federal Register** notice stated that electronic copies of DG–1229 were available in the NRC's Agencywide Documents Access and Management System (ADAMS) (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML103350136 and that the regulatory analysis was available under ML103350166. The ADAMS accession numbers assigned to DG–1229 and noted in 76 FR 2425 are incorrect. Due to this error, the comment period has been extended to allow the public access the correct version.

**SUPPLEMENTARY INFORMATION:** The NRC issued a notice of reissuance and availability of DG–1229, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors" on January 13, 2011. The ADAMS accession numbers for the regulatory analysis and the draft regulatory guide noted on page 2426 of volume 76, "further information" section were incorrect. The content should read "The regulatory analysis is available

electronically under ADAMS accession number ML103400018" and "Electronic copies of DG–1229 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/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML103400008." Due to this error, the public has been granted 10 additional days to comment on DG–1229. The comment submittal deadline is extended from the original March 14, 2011 deadline to March 24, 2011.

**II. Further Information**

The NRC staff is soliciting comments on DG–1229. Comments may be accompanied by relevant information or supporting data and should mention DG–1229 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through ADAMS.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0263 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking website 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–NRC–2009–0263. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

*Mail comments to:* Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB 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 copy for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

*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*. The Regulatory Analysis is available electronically under ADAMS Accession Number ML103400018.

Comments would be most helpful if received by March 24, 2011. 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.

Electronic copies of DG–1229 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/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML103400008.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 14th day of January 2011.

For the Nuclear Regulatory Commission.

**Edward O'Donnell,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2011–1478 Filed 1–24–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–317 and 50–318; NRC–2011–0004]**

## Calvert Cliffs Nuclear Power Plant, LLC, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Exemption

**1.0 Background**

Calvert Cliffs Nuclear Power Plant, LLC, the licensee, is the holder of Facility Operating License Nos. DPR–53 and DPR–69 which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (Calvert Cliffs). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors (PWRs) located in Calvert County, Maryland.

**2.0 Request/Action**

Title 10 of the Code of Federal Regulations (10 CFR) 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," requires, among other items, that "[e]ach boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents [(LOCAs)] conforms to the criteria set forth in paragraph (b) of this section." Appendix K to 10 CFR part 50, "ECCS Evaluation Models," requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The regulations of 10 CFR 50.46 and 10 CFR part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO.

Calvert Cliffs intends to transition from the Westinghouse Turbo 14 x 14 fuel assembly design to the AREVA Advanced CE–14 HTP fuel assembly design beginning in 2011 for Unit No. 2 and 2012 for Unit No. 1. The AREVA fuel design consists of low enriched uranium oxide fuel within M5 zirconium alloy cladding. Since the chemical composition of the M5 alloy differs from the specifications for zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the M5 alloy as a cladding material

or in other assembly structural components. Therefore, by letter dated November 23, 2009, the licensee requested an exemption in order to use M5 advanced alloy for fuel rod cladding and other assembly structural components at Calvert Cliffs.

**3.0 Discussion**

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

*Authorized by Law*

This exemption results in changes to the operation of the plant by allowing the use of the M5 alloy as fuel cladding material or for other assembly structural components in lieu of zircaloy or ZIRLO. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will 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.

*No Undue Risk to Public Health and Safety*

The underlying purposes of 10 CFR 50.46 and 10 CFR part 50, appendix K, are to ensure that facilities have adequate acceptance criteria for the ECCS, and to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model, respectively. Topical Reports (TRs) BAW–10227(P)–A, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," which was approved by the NRC in February 2000, and BAW–10240(P)–A, "Incorporation of M5 Properties in Framatome ANP Approved Methods," which was approved by the NRC in May 2004, demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy to M5. In addition, the TRs also demonstrated that the Baker-Just equation (used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation) is conservative in all post-LOCA scenarios with respect to the use of M5 advanced alloy as a fuel rod cladding material or in other assembly structural components. Based on the above, no new accident precursors are created by using M5 advanced alloy, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. In addition, the licensee will use NRC-approved methods for the reload design process for Calvert Cliffs reloads with M5. Therefore, there is no undue risk to public health and safety due to using M5.

*Consistent With Common Defense and Security*

The proposed exemption results in changes to the operation of the plant by allowing the use of the M5 alloy as fuel cladding material or in other assembly structural components in lieu of zircaloy or ZIRLO. This change to the fuel material used in the plant has no relation to security issues. Therefore, the common defense and security are not impacted by this exemption request.

*Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. In this circumstance neither 10 CFR 50.46 nor 10 CFR part 50, appendix K, explicitly allows the use of M5 as a fuel rod cladding material or in use of other assembly structural components.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for the ECCS. The staff's review and approval of TR BAW–10227(P)–A addressed all of the important aspects of M5 with respect to ECCS Performance Requirements: (1) Applicability of 10 CFR 50.46(b) fuel acceptance criteria, (2) M5 material properties including fuel rod ballooning and rupture strains, and (3) steam oxidation kinetics and applicability of Baker-Just weight gain correlation. A subsequent NRC approved TR, BAW–10240(P)–A, further addressed M5 material properties with respect to LOCA applications.

The underlying purpose of 10 CFR part 50, appendix K, paragraph I.A.5, is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. In TR BAW–10227(P)–A, Framatome demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the M5 advanced alloy as a fuel rod cladding material or in other assembly structural components, and that the amount of hydrogen generated in an M5 core during a LOCA will remain within the Calvert Cliffs design basis.

The M5 alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation-induced growth relative to both standard zircaloy (1.7 percent tin) and low-tin zircaloy (1.2 percent tin). The addition of niobium increases ductility, which is desirable to avoid brittle failures.

The NRC staff has reviewed the licensee's advanced cladding material, M5, for PWR fuel mechanical designs as described in TR BAW–10227(P)–A. In the safety evaluation for TR BAW–10227(P)–A, the staff concluded that, to the extent specified in the staff's evaluation, the M5 properties and mechanical design methodology are acceptable for referencing in fuel reload licensing applications. Therefore, since the underlying purposes of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, Paragraph I.A.5 are achieved through the use of the M5 advanced alloy as a fuel rod cladding material or in other assembly structural components, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR 50.46 and 10 CFR part 50, Appendix K, exist.

*Summary*

The NRC staff has reviewed the licensee's request to use the M5 advanced alloy for fuel rod cladding and in other assembly structural components in lieu of zircaloy or ZIRLO. Based on the NRC staff's evaluation, as set forth above, the NRC staff concludes that the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. In addition, the NRC staff concludes that the underlying purposes of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, are achieved through the use of the M5 advanced alloy. Therefore, pursuant to 10 CFR 50.12(a), the NRC staff concludes that the use of the M5 advanced alloy for fuel rod cladding and in other assembly structural components is acceptable and the exemption from 10 CFR 50.46 and 10 CFR Part 50, Appendix K, is justified.

**4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, appendix K, for Calvert Cliffs.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (76 FR 1469); published on January 10, 2011.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of January 2011.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–1479 Filed 1–24–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0006]**

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATES:** Weeks of January 24, 31, February 7, 14, 21, 28, 2011.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of January 24, 2011**

*Monday, January 24, 2011*

12:55 p.m. Affirmation Session (Public Meeting) (Tentative).

Request by Petitioners for a Suspension of Renewal Proceedings Pending Completion of Rulemaking in Docket No. PRM–54–6. (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1 p.m. Briefing on Safety Culture Policy Statement (Public Meeting). (Contact: Diane Sieracki, 301–415–3297).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

**Week of January 31, 2011—Tentative**

*Tuesday, February 1, 2011*

9 a.m. Briefing on Digital Instrumentation and Controls (Public Meeting). (Contact: Steven Arndt, 301–415–6502).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of February 7, 2011—Tentative**

*Tuesday, February 8, 2011*

9 a.m. Briefing on Implementation of Part 26 (Public Meeting). (Contact: Shana Helton, 301–415–7198).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

**Week of February 14, 2011—Tentative**

There are no meetings scheduled for the week of February 14, 2011.

**Week of February 21, 2011—Tentative**

*Thursday, February 24, 2011*

9 a.m. Briefing on Groundwater Task Force (Public Meeting). (Contact: Margie Kotzalas, 301–415–1727).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

**Week of February 28, 2011—Tentative**

*Tuesday, March 1, 2011*

9 a.m. Briefing on Reactor Materials Aging Management Issues (Public Meeting). (Contact: Allen Hiser, 301–415–5650).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: January 20, 2011.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011–1608 Filed 1–21–11; 4:15 pm]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2011–19 and R2011–3; Order No. 654]**

### Discover Financial Services Negotiated Service Agreement

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add a Discover Financial Services negotiated service agreement to the market dominant product list. This notice addresses procedural steps associated with this filing.

**DATES:** *Comments are due:* February 7, 2011.

**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 **FOR FURTHER INFORMATION CONTACT** 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:**

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

**I. Introduction**

On January 14, 2011, the Postal Service filed a request pursuant to 39 U.S.C. 3622 and 3642, as well as 39 CFR 3010 and 3020, *et seq.,* to add a Discover Financial Services (DFS) negotiated service agreement to the market dominant product list.[1]

[1] Notice of the United States Postal Service of Filing Contract and Supporting Data and Request to

Continued

*Request.* In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a copy of Governors' Resolution No. 11–2, authorizing a negotiated service agreement with DFS;
- Attachment B—a copy of the contract;
- Attachment C—proposed descriptive language changes to the Mail Classification Schedule;
- Attachment D—a proposed data collection plan;
- Attachment E—a Statement of Supporting Justification as required by 39 CFR 3020.32, which the Postal Service also is using to satisfy the requirements of 39 CFR 3010.42(b)–(e); and
- Attachment F—a financial model, which the Postal Service believes demonstrates that the agreement will improve its net financial position by an additional $2 million to $15 million in contribution.

In its Request, the Postal Service identifies Greg Dawson, Manager, Pricing Strategy, as the official able to provide responses to queries from the Commission. In his Statement of Supporting Justification, Mr. Dawson reviews the factors and objectives of section 3622(c) and concludes, *inter alia,* that the agreement will provide an incentive for profitable mail; will enhance the financial position of the Postal Service; will increase mail volume; will not imperil the ability of First-Class Mail or Standard Mail to cover its attributable costs; and promotes the use of intelligent mail. *Id.,* Attachment E at 1–3.

The Postal Service believes that the DFS negotiated service agreement conforms to the policies of the Postal Accountability and Enhancement Act, and meets the statutory standards supporting the desirability of this special classification under 39 U.S.C. 3622(c)(10). In particular, the Postal Service believes the agreement has the potential to enhance significantly the Postal Service's financial position, and it will not cause unreasonable harm to the marketplace. *Id.* at 2.

*Related contract.* The Postal Service indicates that the agreement is designed to maintain the total contribution the Postal Service receives from DFS First-Class Mail and Standard Mail and to provide an incentive for net contribution beyond that. *Id.* The Postal Service describes the agreement and its five main components: a revenue threshold, a revenue threshold adjustment, a postage commitment, rebates on First-Class Mail, and rebates on Standard Mail.

Specifically, the revenue threshold is based on the amount of DFS' total postage paid for First-Class Mail automation presort letters, Standard Mail automation presort letters, and Standard Mail carrier route letters. The baseline for the revenue threshold is DFS' total postage for these categories over the period from February 2010 through January 2011. For the first year of the agreement, the threshold is calculated as an amount 10 percent above the baseline; for the second year, 15 percent above the baseline; and, for the final year, 20 percent above the baseline. If DFS meets or exceeds the threshold in a contract year, it will earn rebates on its qualifying First-Class Mail and Standard Mail postage. The revenue threshold will be adjusted upward by 65 cents for every dollar decline in DFS' First-Class Mail postage. Under this adjustment, to qualify for rebates, DFS must send an extra $1.65 worth of Standard Mail to offset each dollar decline in postage from First-Class Mail. *Id.* at 3.

The agreement also contains a postage commitment, equal to the adjusted threshold. If the amount of DFS' total postage from eligible mail in the first year of the contract is less than the adjusted threshold, DFS must pay a penalty in the amount of 10 percent of the difference between DFS' revenue threshold and the actual total postage paid for contract year one. Subsequent year threshold adjustments to the penalty are to be negotiated by the parties within 7 months of the previous contract year. *Id.* at 3–4.

If DFS meets or exceeds the adjusted postage thresholds in any given year of the contract, it will earn rebates on its qualifying First-Class Mail and Standard Mail postage. The rebate for First-Class Mail will be equal to 75 percent of the increase in postage as a result of a subsequent cumulative price increase (relative to First-Class Mail prices in existence at the initiation of the agreement) for all qualifying pieces. For Standard Mail, the rebate will be equal to 37.5 percent of the increase in postage as a result of a subsequent cumulative price increase (relative to Standard Mail prices in existence at the initiation of the agreement) for all qualifying pieces. *Id.* at 4.

The Postal Service also describes several other elements of the agreement: (1) A merger and acquisition clause; (2) a termination clause; and (3) a clause that requires the Postal Service to negotiate with DFS on the terms upon which DFS may participate in other incentive programs so there is no "double-dipping." *Id.* at 3–4.

The Postal Service expects the value of the agreement to still be positive if the penalty provision is triggered, reducing the risk of the agreement.

The Postal Service indicates that the contract will become effective March 1, 2011, and will expire 3 years from the effective date. *Id.* at 1; *see also id.,* Attachments A and B. Either party may terminate the agreement for convenience prior to the last 90 days of each contract year, without penalty, with 90 days' written notice to the other party. Implementation of the agreement is pending regulatory approval.[2]

*Similarly situated mailers.* With respect to potential similarly situated mailers, the Postal Service states that the design imperative, to generate additional contributions, and the basic structure of the agreement described in the Request, will guide the Postal Service in the negotiation of similar agreements as well as those that are substantially different. *Id.* at 4; *see also id.,* Attachment E at 3. It notes that in assessing the desirability of the agreement, the Postal Service believes that the defining characteristics of DFS are its size, its large but declining billing and statement volumes, its significant volume of advertising mail, and its almost complete reliance on letter-shaped mail. The Postal Service views heavy use of both First-Class Mail and Standard Mail as necessary mailer attributes.

*Notice.* The Postal Service represents that it will inform customers of the new classification changes and associated price effects through a press release, notification on USPS.com, and publication in the **Federal Register**.

## II. Notice of Filing

The Commission establishes Docket Nos. MC2011–19 and R2011–3 for consideration of the Request pertaining to the proposed new product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filing in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 3642 as well as 39 CFR parts 3010 and 3020. Comments are due no later than February 7, 2011. The filing can be accessed via the

Add Discover Financial Services Negotiated Service Agreement to the Market-Dominant Product List, January 14, 2011 (Request).

[2] The Commission will make every possible effort to review the Request and issue its decision by March 1, 2011, consistent with parties' due process rights. The Commission, however, does not read 39 U.S.C. 3642 as mandating regulatory action by a date certain. If the Postal Service (or an interested person) has a different view, the issue may be addressed in comments.

Commission's Web site (*http://www.prc.gov*).

The Commission appoints Malin Moench to serve as Public Representative in these dockets.

**III. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket Nos. MC2011–19 and R2011–3 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Malin Moench is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than February 7, 2011.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–1461 Filed 1–24–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

### Sunshine Act Meetings

**NAME OF AGENCY:** Postal Regulatory Commission.

**TIME AND DATE:** Monday, January 24, 2011 at 11 a.m.

**PLACE:** Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Personnel—consideration of senior-level appointment.

**CONTACT PERSON FOR MORE INFORMATION:** Brian Corcoran, Acting General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, 202–789–6820 or *brian.corcoran@prc.gov.*

*Dated:* January 20, 2011.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–1573 Filed 1–21–11; 11:15 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. R2011–2; Order No. 653]**

### Postal Service Price Adjustment

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to establish price adjustments for all market dominant classes. This notice addresses procedural steps associated with this filing.

**DATES:** *Comments are due:* February 2, 2011.

**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 **FOR FURTHER INFORMATION CONTACT** 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:**

I. Introduction
II. Class-Specific Summary
III. Preferred Mail
IV. Mail Classification Schedule Product Description Changes
V. Commission Action
VI. Ordering Paragraphs

**I. Introduction**

*A. Background*

On January 13, 2011, the Postal Service filed a notice with the Commission announcing price adjustments, effective April 17, 2011, affecting all market dominant classes.[1] The market dominant classes are First-Class Mail, Standard Mail, Periodicals, Package Services, and Special Services. Market dominant international products are also affected.

The Notice asserts that the adjustments reflect price increases for each market dominant class which are equal, on average, to the statutory limitation of 1.741 percent. Slight departures from this percentage at the class level, which are shown in the following table, are generally due to rounding. *Id.* at 8.

TABLE 1—2011 PRICE CHANGE PERCENTAGES

| Market dominant class | Percentage change |
|---|---|
| First-Class Mail | 1.741 |
| Standard Mail | 1.739 |
| Periodicals | 1.741 |
| Package Services | 1.740 |
| Special Services | 1.740 |

*Source:* Adapted from Notice at 5 (Table 3).

Notwithstanding the overall percentage limitation at the class level, planned adjustments for certain individual products within a class may differ from the average, sometimes substantially. For example, the price of a stamp for a one-ounce First-Class letter, which is one of the most common postage rates used by the general public, will not increase, but remain at 44 cents. Presorted First-Class Mail will receive higher-than-price cap percentage increases. The Commission strongly encourages interested persons to review the Postal Service's Notice and related filings in their entirety to determine the impact of the planned adjustments and related classification changes.

*B. Context*

*Authority for filing.* The Postal Service filed the Notice pursuant to 39 U.S.C. 3622 and part 3010 of the Commission's rules of practice. The introductory part of the Notice addresses several administrative matters, including how the Postal Service plans to ensure widespread publicity about the changes at least 45 days prior to the effective date. *Id.* at 1. Part I of the Notice addresses the applicable annual limitation; identifies accrued unused ("banked") rate adjustment authority available for this adjustment; and calculates the amount of new unused rate adjustment authority generated by this price change. *Id.* at 2–6. Part II addresses the consistency of the planned prices with statutory objectives and factors; considerations related to workshare discounts; and recognition of certain rate preferences. *Id.* at 7–45. Part III discusses related mail classification product description changes. *Id.* at 45–46.

The Notice includes three attachments. Attachment A presents price and mail classification changes. Attachment B presents workshare discount calculations. Attachment C presents price index change calculations. In related filings, the Postal Service submitted workpapers supporting the planned adjustments and a new Schedule of Regular Predictable Price Changes.[2]

*C. Basis of Planned Adjustments*

The Notice announcing the planned adjustments for market dominant classes was filed pursuant to a revised, more streamlined approach to postal ratemaking adopted in 2006.[3] This

[1] *See* United States Postal Service Notice of Market-Dominant Price Adjustment, January 13, 2011 (Notice).

[2] United States Postal Service Filing of Updated Schedule of Regular and Predictable Price Changes, January 13, 2011 (Schedule.)

[3] *See generally* Postal Accountability and Enhancement Act (PAEA) of 2006.

approach, in brief, generally limits increases to an annual price cap, although there is an opportunity (but not a requirement) to draw on unused pricing authority generated in previous adjustments.

The Notice identifies 1.741 percent in effect the day of the filing as the applicable annual limitation authority, and asserts that this conforms with the percentage currently shown on the Commission's Web site.[4] *Id.* It also identifies the amount of accrued unused rate adjustment authority for each class, but states that none of this authority is being applied to the instant adjustment. Instead, the Postal Service is relying on only the annual limitation rate adjustment authority. This means that a uniform 1.741 percent of rate adjustment authority is available for each class. *Id.* at 3–4. The application of this limit results in some unused pricing authority for three classes. These amounts, along with amounts generated in previous adjustments, appear in Table 4. *Id.* at 6.

**II. Class-Specific Summary**

*A. First-Class Mail*

The Postal Service is not increasing the First-Class Mail, single-piece first-ounce letter price; however, the additional-ounce rate for single-piece letters and flats increases from 17 cents to 20 cents. *Id.* at 12. The price of a single-piece postcard increases from 28 cents to 29 cents. *Id.* However, to meet the cap average increase for the class as a whole, the Postal Service plans to adjust presorted mail by a higher-than-cap average price percentage. *Id.* This is characterized as the reverse of Docket No. R2009–2, when the presort grouping received a smaller-than-cap increase. *Id.* The Notice identifies the following percentage change for the six products in First-Class Mail:

TABLE 2—2011 FIRST-CLASS MAIL PRODUCT PRICE CHANGES

| Product | Percentage change |
|---|---|
| Overall | 1.741 |
| Single-Piece Letters & Cards | 0.461 |
| Presort Letters & Cards | 1.796 |
| Flats | 5.343 |
| Parcels | 3.753 |
| International | 3.974 |

*Source:* Adapted from Notice at 12 (Table 5).

The Notice states that the price change maintains the per-piece price differential between letters and flats and increases the price differential between letters and parcels, thereby resulting in above-average increases for Flats and Parcels products. *Id.* at 13. It also addresses other price relationships, including the significance of the 5-digit automation letter increase, which is 1.5 percent, and thereby below the 1.741 percent increase for the class as a whole. *Id.* The overall increase for Flats prices is 5.3 percent, stemming largely from a 17.6 percent increase in the price of additional ounces (moving from 17 cents to 20 cents). *Id.* at 14. Adjustments for automation flats vary, ranging from no increase for some categories to small increases or a reduction. *Id.*

First-Class Mail parcels receive a 3.8 percent increase, which the Notice identifies as higher than the overall increase for this class, but still significantly less than the increase for Standard Mail parcels. *Id.*

*Pricing design changes.* The Notice identifies two pricing design changes in First-Class Mail. One involves the introduction of two separate pricing categories for parcels: Commercial Base and Commercial Plus. Commercial Base includes all parcels currently included in the Presort parcels category, plus the commercial portion of single-piece parcels. Single-piece parcels that are the residual of a presorted parcel mailing and non-presorted parcels where postage is paid by permit imprint, IBI meter, or PC Postage would be eligible for Commercial Base single-piece prices. All other single-piece parcels would pay retail prices. *Id.* at 14–15. The Notice says this change recognizes that parcels eligible for "commercial" prices avoid entry through the more costly retail channel. *Id.* at 15. Commercial Plus parcels is a new price category for machinable First-Class Mail parcels that weigh at least 3.5 ounces up to, but not including, 16 ounces. *Id.* Other requirements apply. *Id.*

The second pricing design change involves treating the first three ounces in each parcel pricing category as a single price cell, with parcels in each price category paying a single price. *Id.* The rationale is that this will improve contribution from a segment of the First-Class Mail parcel category that has not been providing an adequate contribution. *Id.* at 15–16.

The Postal Service plans to increase outbound single-piece First-Class Mail International by 5.2 percent. *Id.* at 16. Other international changes also are identified. *Id.*

*Additional matters.* The Notice presents a detailed discussion of First-Class Mail workshare discounts. *Id.* at 27–29. Workpaper USPS–R2011–2/1 provides additional detail on the planned First-Class Mail price adjustments and workshare discounts.

*B. Standard Mail*

The Notice identifies the following changes for Standard Mail products:

TABLE 3—2011 STANDARD MAIL PRODUCT PRICE CHANGES

| Product | Percentage change |
|---|---|
| Overall | 1.739 |
| Letters | 1.810 |
| Flats | 0.835 |
| Parcels and NFMs | 11.346 |
| High Density/Saturation Letters | 0.615 |
| High Density/Saturation Flats & Parcels | 0.403 |
| Carrier Route Letters, Flats & Parcels | 1.376 |

*Source:* Adapted from Notice at 16 (Table 7).

Standard Mail Letters increase by 1.810, slightly above the class-wide average. *Id.* at 16. The Notice states that the below-cap price change for the Flats product reflects a continued effort to moderate the increase for catalog mailers, as their volume fell considerably in FY 2008 and FY 2009. *Id.* It also presents other observations about the need for a cautious approach to Standard Mail flats, generally tied to poor economic conditions. *Id.* Standard Mail Parcels/NFMs receive an increase of 11.346 percent based on a need to improve cost coverage. *Id.* at 18.

The Notice also states that the Postal Service recently filed a classification change to transfer Standard Mail parcels to the competitive category.[5] It says the proposed prices are designed to move this product closer to covering its costs. *Id.* at 18.

The 1.376 percent increase for Carrier Route mail is below the cap in partial recognition of the fact that this product is used by the catalog industry. *Id.*

*Additional matters.* The Notice presents a detailed discussion of workshare discounts. *Id.* at 29–42. Further details about the planned adjustment for Standard Mail, including workshare discounts, appears in Workpaper USPS–R2011–2/2.

*C. Periodicals*

The Notice identifies the following changes for Periodicals:

[4] This is based on a 12-month moving average of the Consumer Price Index—All Urban Consumers, U.S. All Items (the ''CUUR0000SA0'' series). *Id.* at 3.

[5] *See* Docket No. MC2010–36, Request of the United States Postal Service to Transfer Commercial Standard Mail Parcels to the Competitive Product List, August 16, 2010.

TABLE 4—2011 PERIODICALS PRODUCT PRICE CHANGES

| Product | Percentage change |
|---|---|
| Overall | 1.741 |
| Outside County | 1.767 |
| Within County | 1.093 |

*Source:* Adapted from Notice at 19 (Table 8).

The Notice refers to this class's "challenged" cost coverage status, and states that the new prices are designed to balance the effect on individual publications and their readers, while taking advantage of the new price structure to create relationships that will improve efficiency. *Id.* at 19.

*Additional matters.* The Notice presents a detailed discussion of workshare discounts. *Id.* at 29–42. It notes that in this case, the Postal Service "uses the flexibility of the container-bundle-piece price structure" to limit the extent to which price increases for individual publications differ from the average. *Id.* at 43. However, it asserts that at the same time, incentives for efficient preparation are strengthened by reflecting a higher percentage of costs in prices that have minimal impact on publications that are likely to experience above-average increases. It says this furthers the goal of more efficient containerization, while being mindful of the impact on publications that cannot easily change preparation. *Id.* at 43. Further details about the planned adjustment for Periodicals, including workshare discounts, appear in Workpaper USPS–R2011–2/3.

*D. Package Services*

The Notice identifies the following price changes for Package Services:

TABLE 5—2011 PACKAGE SERVICES PRODUCT PRICE CHANGES

| Product | Percentage change |
|---|---|
| Overall | 1.740 |
| Single-Piece Parcel Post | 1.807 |
| BPM Flats | 0.707 |
| BPM Parcels | 1.982 |
| Media Mail & Library Mail | 1.964 |
| Inbound Surface Parcel Post | *1.531 |

*Prices for Inbound Surface Parcel Post (at UPU rates) are determined by the Universal Postal Union. They are not under the control of the Postal Service. These prices are adjusted on a calendar basis. The most recent price change took place on January 1, 2011.

*Source:* Adapted from Notice at 12 (Table 5).

The Notice states the Postal Service's overall goal for this class is to improve product profitability. *Id.* at 20. This is reflected in increasing the prices of the lowest-performing segments (in terms of cost coverage), while remaining within the overall annual limitation. However, prices for Media Mail and Library Mail are still below other ground parcels to recognize their educational, cultural, scientific, and informational value. *Id.*

For single-piece Parcel Post, the Postal Service proposes allowing prices at the one-pound increment to vary by zone. *Id.* at 21. It says this releases the price constraint for unzoned pricing, which has been used in the past to avoid having Parcel Post prices exceed Priority Mail prices for the same weight and zone. *Id.* The Notice says the release of this pricing constraint at the one-pound increment leads to higher prices for more distant zones. However, the limited size of this price increase limits the range of possible price changes; therefore, most price increases occur in the range of one to five pounds and the remaining prices are nearly unchanged. *Id.*

*Additional matters.* The Notice presents a detailed discussion of workshare discounts. *Id.* at 44–45. Further details about the planned adjustment for Package Services, including workshare discounts, appears in Workpaper USPS–R2011–2/4.

*E. Special Services*

*Special Services.* The Special Services class includes Ancillary Services; International Ancillary Services; Address Management Services; Caller Service; Change-of-Address Credit Card Authentication; Confirm; International Reply Coupon Service; International Business Reply Mail Service; Money Orders; Post Office Box Service; and Customized Postage. *Id.* at 22. The Notice identifies the overall fee increase for Special Services, as a class, as 1.740 percent. *Id.* It does not present a table summarizing percentage price changes by individual product, but indicates that for many of the Special Services, fee increases were generally designed to be close to the cap percentage, while maintaining consistency with historical rounding constraints, as these often simplify transactions for customers. *Id.* It says this approach was used for Address Correction Service; Business Reply Mail; Certified Mail; Address Management Services; Applications and Mailing Permits; Parcel Airlift Service; Post Office Boxes; Registered Mail; Return Receipt; Bulk Parcel Return Service; and Shipper Paid Forwarding. *Id.*

The Notice identifies Account Maintenance Fees as having an increase of 3.4 percent to reflect the value of the services the accounting fee supports and the goal of recovering institutional costs. *Id.* Insurance also experiences above-average increases in two tiers ($50.01 to $100.00 and $100.01 to $200.00) due to a combination of the nickel rounding constraint and a continued effort to "smooth" price relationships among the various increments. *Id.* An increase in the incremental fee reflects the higher value of service as the value of the item increases. *Id.*

Price increases of between 4 and 5 percent for Caller Service reflect the higher value customers place on this service. *Id.* For Post Office Boxes, prices are increased only for Size 1 boxes due to the small size of the cap. The Notice identifies an increase of $2 in Size 1 Fee Groups 1 and 2 and of $1 in Fee Groups 3 through 7. *Id.* at 22–23.

Stamped Envelopes receive an overall increase of 2.5 percent. *Id.* at 23. The fee for Stamped Cards remains unchanged at 3 cents. *Id.* Collect on Delivery receives a higher-than-average increase of 4.2 percent based on failure to cover costs. *Id.*

The Notice states that the Postal Service's overall approach to international special services is to set fees for these services similar to the fees for the equivalent domestic service. *Id.* at 23.

Workpaper USPS–R2011–2/5 provides additional detail on the Special Services adjustment.

**III. Preferred Mail**

The Notice states the Postal Service implements the requirements of 39 U.S.C. 3626 in the same manner as it did in Docket No. R2009–2, observing that the Commission concluded that approach reflected an appropriate approach. *Id.* at 23–24. It identifies the preferred products or components (Within County Periodicals, Nonprofit and Classroom Periodicals, Science of Agriculture Periodicals advertising pounds, Nonprofit Standard Mail, and Library Mail) and describes how the planned adjustments reflect the various statutory preferences. *Id.* at 23–25.

*Consistency with 39 U.S.C. 3627 and 3629.* The Notice states that neither section is implicated by the price change, as it does not seek to alter free rates (section 3627) or change the eligibility requirements for nonprofit rates (section 3629). *Id.* at 25.

**IV. Mail Classification Schedule Product Description Changes**

The Notice, in conformance with rule 3010.14(b)(9), identifies changes to product descriptions in the Mail Classification Schedule (MCS) associated with the planned price

adjustments in Attachment A. The MCS revisions are characterized as "very limited," with only two substantive changes. *Id.* at 45. The two substantive changes are (1) the First-Class Mail classification changes related to adding a Commercial Plus category for parcels weighing between 3.5 and 16 ounces, and (2) the elimination of stamped envelopes with Standard Mail denominations in response to available alternatives and reduced consumer demand. *Id.* at 45–46. The Postal Service states that the latter change was proposed in Docket No. R2010–4.

The Postal Service identifies the following items as corrections to the MCS:

- Correcting the maximum weight for Presorted Machinable Letters in section 1110.5;
- Renaming Single-Piece Retail and Presorted as Commercial Base in section 1120;
- Using a footnote rather than a table to show the nonbarcoded/nonmachinable surcharge in section 1120.5;
- Clarifying the treatment of letters weighing more than 3.3 ounces in section 1205.5 and section 1215.5;
- Correcting a reference to the incorrect product in the Ride-Along note in section 1310.6;
- Conforming the Post Office Box lock replacement language in section 1550.1 with the Competitive MCS (noting that the fee is applied to late payments); and
- Correcting a reference to the Republic of Serbia in the country lists in Part D.

*Id.* at 46.

The Postal Service anticipates publishing notice of the changes to the Domestic Mail Manual implementing the new features in the **Federal Register** shortly. *Id.*

**V. Commission Action**

The filing of the Notice triggers a Commission review process which culminates in an order on the consistency of the planned adjustments with various legal, policy, and technical requirements. At this time, the Commission takes several steps in line with its responsibilities. First, it has posted the Notice and related filings on its Web site (*http://www.prc.gov*). It also has made the Notice available for copying and inspection during regular business hours (8 a.m. to 4:30 p.m.) at the Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001. Any subsequent Postal Service filings in this docket, along with any written comments and filings by others, will be posted on the Commission's Web site and made available for public inspection and copying on the same terms and at the same location as the Notice.

Second, the Commission establishes a formal docket, captioned Docket No. R2011–2, Notice of Price Adjustment, to conduct its review of the planned adjustments under 39 U.S.C. 3622.

Third, the Commission, pursuant to 39 U.S.C. 505, appoints Kenneth E. Richardson as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding. He will be assisted by Pamela Thompson of the Commission's Office of Accountability and Compliance.

Fourth, the Commission provides a 20-day comment period, calculated from the date the Notice was filed. Thus, the comment period in this docket extends through close of business on February 2, 2011. Rule 3010.31(b) provides that public comments should focus primarily on whether the planned adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter 1, including:

(1) Whether the planned rate adjustments measured using the formula established in section 3010.23(b) are at or below the annual limitation established in section 3010.11; and

(2) Whether the planned rate adjustments measured using the Formula established in section 3010.23(b) are at or below the limitations established in section 3010.28.

*Method for filing comments.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's Docket Section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Individuals without access to the Internet or otherwise unable to file documents electronically may request a waiver of the requirement that documents be filed electronically by filing a motion for waiver with the Commission. Such motion may be filed along with any comments such individual may wish to submit in this proceeding. Individuals requesting a waiver may file hardcopy documents with the Commission either by mailing or by hand delivery to the Office of the Secretary, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing. Any person needing assistance in requesting a waiver may contact the Docket Section at 202–789–6846. Hardcopy comments received will be scanned and posted on the Commission's Web site.

*Official publication.* The Commission directs the Secretary to arrange for prompt publication of this notice and order in the **Federal Register**.

**VI. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. R2011–2 to consider the planned adjustments in prices and fees for market dominant postal products and services, as well as the mail classification changes, identified in the Postal Service's January 13, 2011 Notice of Market-Dominant Price Adjustment.

2. Interested persons may submit comments on the planned price adjustments. Comments are due February 2, 2011.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson as officer of the Commission to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–1383 Filed 1–24–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review, Request for Comments

*Summary:* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension without change of a currently approved collection of information: 3220–0151, Representative Payee Monitoring consisting of Form(s) G–99a, Representative Payee Report and G–99c, Representative Payee Evaluation Report. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to

determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

The RRB utilizes the following forms to conduct its representative payee monitoring program. Form G–99a, *Representative Payee Report,* is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. RRB Form G–99c, *Representative Payee Evaluation Report,* is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a, or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (75 FR 41557 on July 16, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Representative Payee Monitoring.

*OMB Control Number:* 3220–0151.

*Form(s) submitted:* G–99a, G–99c.

*Type of request:* Extension without change of a currently approved collection.

*Affected public:* Individuals or households.

*Abstract:* Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as representative payee. The collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

*Changes Proposed:* The RRB proposes no changes to Forms G–99a or Form G–99c.

*The burden estimate for the ICR is as follows:*

*Estimated Completion Time for Form(s):* Completion time for G–99a is estimated at 18 minutes. Completion time for Form G–99c is estimated at 24 to 31 minutes.

*Estimated Annual Number of Respondents:* 5,400.

*Total Annual Responses:* 5,820 (5,400 G–99a's and 420 G–99c's).

*Total Annual Reporting Hours:* 1,802.

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Patricia.Henaghan@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. 2011–1458 Filed 1–24–11; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63719, File No. 4–518]**

## Joint Industry Plan; Order Approving Amendment To Add the BATS Y–Exchange, Inc. as Participant to National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS

January 14, 2011.

### I. Introduction

On September 9, 2010, the BATS Y–Exchange, Inc. ("BYX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") in accordance with Section 11A of the Securities Exchange Act of 1934 ("Act") [1] and Rule 608 of Regulation NMS,[2] a proposed amendment to the national market system plan establishing procedures under Rule 605 of Regulation NMS ("Joint-SRO Plan" or "Plan").[3] Under the proposed amendment, BYX would be added as a participant to the Joint-SRO Plan. Notice of filing and an order granting temporary effectiveness of the proposal through January 18, 2011 were published in the **Federal Register** on September 17, 2010.[4] The Commission did not receive any comments on the proposed amendment. This order approves the amendment on a permanent basis.

### II. Discussion

The Joint-SRO Plan establishes procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The current participants to the Joint-SRO Plan are the American Stock Exchange LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange[SM]), EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. The proposed amendment would add BYX as a participant to the Joint-SRO Plan.

Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section II(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval. BYX submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants.

The Commission finds that the amendment to the Joint-SRO Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[4] *See* Securities Exchange Act Release No. 62896 (September 13, 2010), 75 FR 57088.

Commission finds that the proposed amendment is consistent with the requirements of Section 11A of the Act,[5] and Rule 608 of Regulation NMS.[6] The Plan established appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS available to the public in a uniform, readily accessible, and usable electronic format. The amendment to include BYX as a participant in the Joint-SRO Plan should contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow BYX to become a participant in the Joint-SRO Plan. The Commission finds, therefore, that approving the amendment to the Joint-SRO Plan is appropriate and consistent with Section 11A of the Act.[7]

## III. Conclusion

*It is therefore ordered,* pursuant to Section 11A(a)(3)(B) of the Act [8] and Rule 608 of Regulation NMS,[9] that the amendment to the Joint-SRO Plan to add BYX as a participant is approved and BYX is authorized to act jointly with the other participants to the Joint-SRO Plan in planning, developing, operating, or regulating the Plan as a means of facilitating a national market system.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–1431 Filed 1–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1(a)(3)(B).

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63731; File No. SR–BX–2010–083]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change Relating to the Price Improvement Period To Permit an Initiating Participant To Designate a PIP Surrender Quantity

January 19, 2011.

On November 24, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to the Rules of the Boston Options Exchange Group, LLC ("BOX") to permit an Options Participant initiating a Price Improvement Period ("PIP") to designate a PIP Surrender Quantity. Notice of the proposed rule change was published for comment in the **Federal Register** on December 8, 2010.[3] The Commission received no comments on the proposal.

Currently, the BOX rules that govern the PIP ("PIP Rules") [4] generally allow an Options Participant initiating a PIP ("Initiating Participant") to retain priority and trade allocation privileges for forty percent (40%) of the size of a PIP Order upon conclusion of the PIP auction.[5] This proposed rule change will permit an Initiating Participant, when starting a PIP auction, to submit the Primary Improvement Order to BOX with a designation to specify a quantity of contracts that it is willing to "surrender" from the number of contracts to which it is entitled to other Options Participants ("PIP Surrender Quantity").[6] By designating a PIP Surrender Quantity, the Initiating Participant could potentially be allocated less than the forty percent (40%) to which it may be entitled under BOX Rules.[7]

The proposed rule change further makes clear that in no case shall the Initiating Participant's use of the Surrender Quantity function result in an allocation to the Initiating Participant that would be greater than the maximum allowable allocation the Initiating Participant would otherwise receive in accordance with the allocation procedures set forth in the PIP Rules.[8] The proposal specifies that the PIP Surrender Quantity shall not be effective for an amount that is lesser than or equal to sixty percent (60%) of the size of the PIP Order.

Additionally, the proposed rule change will modify the BOX Trading Host's trade allocation at the conclusion of the PIP auction to account for the PIP Surrender Quantity. The proposal specifies that when the BOX Trading Host determines the priority and trade allocation amounts for the Initiating Participant upon the conclusion of the PIP auction, the Trading Host will automatically adjust the trade allocations to the other PIP Participants according to the priority set forth generally in the PIP Rules,[9] providing a total amount to the other PIP Participants up to the PIP Surrender Quantity. Under the proposal, the Primary Improvement Order is allocated the remaining size of the PIP Order, if any. If the aggregate size of other PIP Participants' contra orders is not equal to or greater than the PIP Surrender Quantity, then the remaining PIP Surrender Quantity shall be left unfilled by those participants and the Primary Improvement Order shall be allocated the remaining size of the PIP Order as set forth in the PIP Rules.[10] The Exchange has stated that it will provide Options Participants with three (3) business days notice, via Information Circular, about the implementation date of the PIP Surrender Quantity prior to

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63416 (December 2, 2010), 75 FR 76503.

[4] *See* Chapter V, Section 18 of the Rules of the Boston Options Exchange Group, LLC ("BOX Rules").

[5] *See id.,* paragraphs f(i)–f(ii).

[6] The Initiating Participant would specify the PIP Surrender Quantity as a number of contracts, not as a percentage of the total PIP Order. Telephone conversation between Michael Burbach, Vice President of Legal Affairs, BOX and Ira Brandriss, Special Counsel and Nicholas Shwayri, Attorney-Advisor, Division of Trading and Markets, Commission, January 19, 2011.

[7] The Primary Improvement Order would also still yield priority to certain competing orders in certain circumstances. *See* PIP Rules, *supra* note 4, paragraph (f)(iii). In the case of a Max Improvement Primary Improvement Order, *see* subsection (e)(ii) of the PIP Rules, the Surrender Quantity would be deducted from the number of contracts, if any, remaining for the Initiating Participant at the last level of allocation—*i.e.,* from the 40% share to which the Initiating Participant is entitled at that level—and ceded to any other Options Participants at that level. Thus it is possible, under the proposed rule change, that if the Surrender Quantity is greater than the number of contracts remaining for the Initiating Participant at the last level of allocation, the Initiating Participant will receive no contracts at that level. Telephone conversation between Michael Burbach, Vice President of Legal Affairs, BOX, and Ira Brandriss, Special Counsel and Nicholas Shwayri, Attorney-Advisor, Division of Trading and Markets, Commission, January 19, 2011.

[8] *See, generally id.,* paragraph (f).

[9] *See id.,* paragraph (e).

its implementation in the BOX trading system.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that Initiating Participant's use of the Surrender Quantity function could benefit investors by allowing an Initiating Participant the flexibility to designate a lower amount than the forty percent (40%) of the PIP Order to which the Initiating Participant is entitled, thereby providing the other PIP Participants with the opportunity to receive increased trade allocations.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–BX–2010–083), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–1435 Filed 1–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63732; File No. SR–NASDAQ–2011–007]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Impose a Quarterly Maximum on the Listing of Additional Shares Fees Payable by Closed-End Funds

January 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2011, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to impose a quarterly maximum on the listing of additional shares fees payable by Closed-End Funds. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change is below. Proposed new language is in italics.

**5910. The NASDAQ Global Market**

(a) No change.

(b) Additional Shares

(1)–(5) No change.

(6) *The maximum fee charged to an issuer that is a Closed-End Fund in any quarter is $25,000 per Company.*

(c)–(f) No change.

**5920. The Nasdaq Capital Market**

(a) No change.

(b) Additional Shares

(1)–(5) No change.

(6) *The maximum fee charged to an issuer that is a Closed-End Fund in any quarter is $25,000 per Company.*

(c)—(e) No change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq currently assesses a fee for listing additional shares of an already listed class in the amount of $5,000 or $0.01 per additional share, whichever is higher, up to an annual maximum of $65,000 per listed company.[3] There is no fee assessed for issuances of less than 50,000 shares per quarter.[4] This fee applies to both operating companies and closed-end companies ("Closed-End Funds").

A Closed-End Fund is a type of company regulated under the Investment Company Act of 1940.[5] Generally, a Closed-End Fund sells a fixed number of shares and invests the proceeds in investments chosen by its investment adviser to achieve the funds stated investment objectives. Shareholders have an interest in the fund's investments, but generally cannot redeem shares from the fund. Instead, the Closed-End Fund's shares are listed and trade at a value which may be greater or less than the fund's assets. Unlike operating companies, a Closed-End Fund is not taxed on its income so long as it generates at least 90% of its income from permissible sources, including dividends on and gains from the sale of stock or securities, and distributes that income to its shareholders.[6] As a consequence, a Closed-End Fund generally distributes all of its income annually and does not have access to retained earnings for new investment opportunities. A Closed-End Fund, therefore, frequently needs to issue additional shares to raise new capital in order to fund such opportunities. This is in contrast to operating companies, which generally have access to retained earnings to acquire new assets, and as a consequence are not limited to issuing shares.

Given the unique nature of Closed-End Funds, Nasdaq believes it is appropriate to provide them relief from the fee for listing additional shares in the form of a $25,000 quarterly limit. The quarterly maximum will reduce the likelihood of reaching the existing $65,000 annual limit and eliminate the possibility of reaching the annual maximum with a single capital raise or

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Nasdaq Listing Rule 5910(b), applicable to Nasdaq Global and Global Select Market companies and Nasdaq Listing Rule 5920(b), applicable to Nasdaq Capital Market companies.

[4] *Id.*

[5] 15 U.S.C. 80a–5.

[6] 26 U.S.C. 851—856.

in a single quarter. Nasdaq previously had a fee schedule for listing additional shares that, like the proposed amended rule, included both an annual and quarterly fee cap, but was applicable to operating companies and Closed-End Funds alike.[7] As such, and for the reasons discussed above, we believe it is appropriate to adopt a quarterly maximum on the listing of additional shares fees payable by closed-end funds in addition to the current annual maximum.

While Nasdaq believes the proposed quarterly cap is appropriate, Nasdaq continues to believe that it is also appropriate to charge Closed-End Funds a listing of additional shares fee. In that regard, Nasdaq notes that it must review share issuances by Closed-End Funds for compliance with the shareholder approval rules. In addition, other markets also charge fees for the listing of additional Closed-End Fund shares, separate from operating companies.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and (b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Nasdaq is instituting a quarterly maximum on the listing of additional shares fees applicable to Closed-End Funds based on their unique characteristics and their need to issue shares as a primary means by which they may expand their businesses. As such, Nasdaq believes that Closed-End Funds are differently impacted than operating companies by the current listing of additional shares fees, and believes that the proposed quarterly fee cap will serve to lessen the adverse impact of the current fees. In light of these considerations, Nasdaq believes that the proposed rule change will promote a more equitable allocation of listing fees by reducing the impact of listing of additional share fees on a class of issuers that must issue shares as a primary means by which to expand their business, and, accordingly, consistent with Section 6(b)(5) of the Act[11] will not unfairly discriminate between issuers.

Nasdaq also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act[12] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As noted above, Nasdaq is implementing the quarterly fee cap because it believes that Closed-End Funds are differently impacted than operating companies by the current listing of additional shares fees. The proposed quarterly fee cap will serve to lessen the adverse impact of the current fee, and, as noted above, does not unfairly discriminate between issuers. As such, Nasdaq believes that the proposed rule change promotes just and equitable principles of trade.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f)(2) of Rule 19b–4 thereunder,[14] because it establishes a due, fee, or other charge imposed by Nasdaq.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–NASDAQ–2011–007 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–NASDAQ–2011–007. 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 No. SR–NASDAQ–2011–007 and should be submitted on or before February 15, 2011.

[7] Securities Exchange Act Release No. 48631 (October 15, 2003), 68 FR 60426 (October 22, 2003) (SR–NASD–2003–127) (eliminating the quarterly fee cap for listing additional shares while retaining the annual fee cap).

[8] The New York Stock Exchange assesses a Closed-End Fund listing of additional securities fee. *See* NYSE Listed Company Manual Sections 902.03 and 902.04.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–1436 Filed 1–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63729; File No. SR–FINRA–2011–003]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Regarding the Use of Multiple MPIDs on FINRA Facilities

January 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a rule change to extend through January 27, 2012, the current rules regarding the use of multiple Market Participant Symbols ("MPIDs") in FINRA Rules 6160 (with respect to Trade Reporting Facilities ("TRFs")), 6170 (with respect to the Alternative Display Facility ("ADF")), and 6480 (with respect to the OTC Reporting Facility ("ORF")).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA has three rules governing the use of multiple MPIDs on FINRA facilities: Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants), Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants), and Rule 6480 (Multiple MPIDs for Quoting and Trading in OTC Equity Securities). The pilot period for all three rules is scheduled to expire on January 28, 2011. FINRA believes that there continue to be legitimate business reasons for members to maintain multiple MPIDs for use on FINRA facilities. Consequently, FINRA is proposing to extend the pilot period for each of the three rules until January 27, 2012. FINRA is not proposing any other changes to the rules at this time; however, FINRA notes that it intends to file a proposed rule change within the next year that amends the rules governing multiple MPIDs, including a proposed rule change to make the rules permanent.

(1) Rule 6160

Rule 6160 provides that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a TRF must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a TRF. FINRA believes that Rule 6160 is necessary to consolidate the process of issuing, and tracking the use of, multiple MPIDs used to report trades to TRFs.

Rule 6160 was approved by the Commission in 2006 on a pilot basis.[4] The pilot period has been extended several times since the rule was originally adopted and currently expires on January 28, 2011.[5]

(2) Rule 6170

Rule 6170 provides that a Registered Reporting ADF ECN may request additional MPIDs for displaying quotes and orders and reporting trades through the ADF trade reporting facility, TRACS, for any ADF-Eligible Security. Among other things, Registered Reporting ADF ECNs are prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. In addition, FINRA staff retains full discretion to determine whether a bona fide regulatory and/or business need exists for being granted an additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time. The procedures for requesting, and the restrictions surrounding the use of, multiple MPIDs are set forth in Supplementary Material to the rule.

The Commission approved Rule 6170 on a pilot basis on August 11, 2006.[6] The pilot period has been extended several times since the rule was

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006); *see also* Securities Exchange Act Release No. 54715A (November 14, 2006), 71 FR 67183 (November 20, 2006).

[5] *See* Securities Exchange Act Release No. 61297 (January 6, 2010), 75 FR 2173 (January 14, 2010); Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[6] *See* Securities Exchange Act Release No. 54307 (August 11, 2006), 71 FR 47551 (August 17, 2006). By its terms, the initial pilot period expired on January 26, 2007, to coincide with the expiration of the ADF pilot period. *See* Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006). On January 26, 2007, the Commission approved a proposed rule change to make the ADF rules permanent. *See* Securities Exchange Act Release No. 55181 (January 26, 2007), 72 FR 5093 (February 2, 2007).

originally adopted and currently expires on January 28, 2011.[7]

(3) Rule 6480

Like Rule 6160, Rule 6480 provides that any member that wishes to use more than one MPID for purposes of quoting an OTC Equity Security or reporting trades to the ORF must submit a written request to, and obtain approval from, FINRA Operations for such additional MPIDs. The rule also states that a member that posts a quotation in an OTC Equity Security and reports to a FINRA system a trade resulting from such posted quotation must utilize the same MPID for reporting purposes. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. When requesting an additional MPID(s), a member must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a member is using one or more additional MPIDs improperly or for purposes other than the purpose(s) identified by the member, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such member.

FINRA adopted Rule 6480 on a pilot basis on July 23, 2009.[8] The pilot period was extended and expires on January 28, 2011.[9]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be January 28, 2011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with these requirements because it will provide a process by which members can request, and FINRA can properly allocate, the use of additional MPIDs for displaying quotes and orders through the ADF or reporting trades to a TRF or the ORF.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) 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 public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. FINRA has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

FINRA asks that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b–4(f)(6)(iii).[13] FINRA requests this waiver in order to prevent a lapse in the current pilots.

The Commission acknowledges that the proposal presents no novel issues, and that it will provide a benefit to market participants by avoiding a temporary lapse in the pilot programs. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[14]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–003 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–003. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2011–003 and

[7] *See* Securities Exchange Act Release No. 61297 (January 6, 2010), 75 FR 2173 (January 14, 2010); Securities Exchange Act Release No. 59183 (December 30, 2008), 74 FR 842 (January 8, 2009); Securities Exchange Act Release No. 57217 (January 28, 2008), 73 FR 6234 (February 1, 2008); Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[8] *See* Securities Exchange Act Release No. 60414 (July 31, 2009), 74 FR 39721 (August 7, 2009).

[9] *See* Securities Exchange Act Release No. 61297 (January 6, 2010), 75 FR 2173 (January 14, 2010).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

should be submitted on or before February 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–1434 Filed 1–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63722; File No. SR–NSCC–2010–16]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Procedure II of the NSCC Rules & Procedures To Modify the Money Tolerance Comparison Provisions for Fixed Income Securities

January 14, 2011.

### I. Introduction

On November 19, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–NSCC–2010–16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 8, 2010.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

### II. Description

NSCC provides a Real-Time Trade Matching ("RTTM") service for trade input and comparison of corporate bond, municipal bond, and unit investment trust (collectively "CMU") fixed income securities. Matching requires that the two trade counterparties submit certain required trade details to RTTM that either match exactly or fall within predefined parameters. If the trade details are matched within RTTM, a valid and binding contract between the submitting trade parties results. If the purchaser and seller submit trade data that matches in all required aspects except for trade value, NSCC uses the seller's money (referred to as "seller's value") as the trade value and deems the trade compared as long as the difference between the seller's submitted trade value and the buyer's submitted trade value falls within prescribed dollar values (*i.e.,* money tolerance amounts) as more fully described below.

Prior to the rule change, Procedure II of NSCC's Rules & Procedures provided two scenarios in which trades would be compared using the seller's value. In the first scenario, NSCC uses the seller's value to match a trade submitted prior to the cut-off time for intraday comparison if the respective trade parties have submitted contract amounts that are within (1) a net $2 difference for trades of $1 million or less and (2) $2 per million for trades greater than $1 million. In the second scenario, NSCC also used the seller's value during the end-of-day enhanced comparison process to match a trade that remained uncompared after the intraday comparison process if the contract amounts were within (i) a net $10.00 difference for trades of $100,000 or less and (ii) $.10 per $1,000 for trades greater than $100,000.

Since the establishment of these CMU money tolerance amounts in 1995, member firms have significantly improved the timing and accuracy of fixed income trade reporting. In 2005, the Municipal Securities Rulemaking Board ("MSRB") instituted a requirement that firms report trades in municipal securities to the RTTM engine within 15 minutes, which required member firms to improve their reporting accuracy and technology. As a result, RTTM is matching a greater percentage of CMU trades upon initial trade input from the buyer and seller.

NSCC believes that because of these improvements the current money tolerance is wider than needed and that best practices dictates that the money tolerance be modified to reflect current business conditions. Accordingly, NSCC is reviewing the CMU money tolerance for the above described second scenario in which trades are compared using the seller's value. As amended, NSCC's Rules and Procedures will provide that transactions that remain uncompared after the intraday comparison process shall be deemed compared during the end-of-day enhanced comparison process using the seller's value if the trade parties have submitted contact amounts that have a net $10.00 difference for trades of $250,000 or less and $0.04 per $1,000 for trades greater than $250,000.[3] NSCC members will be advised of the implementation date through the issuance of an NSCC Important Notice.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[4] By narrowing the money tolerance, the rule change should allow NSCC to enhance the efficiency of its clearance and settlement processes by providing for more trades to be compared and settled. As a result, NSCC should be better enabled to facilitate the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with NSCC's requirements under the Act, in particular with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2010–16) be and hereby is approved.[5]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–1432 Filed 1–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 63404 (December 1, 2010), 75 FR 76515 (December 8, 2010).

[3] NSCC has informed Commission staff that NSCC money tolerance amounts were developed in part to align NSCC's money tolerance amounts with those used by FICC's Government Securities Division.

[4] 15 U.S.C. 78q-1(b)(3)(F).

[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63728; File No. SR–NASDAQ–2011–009]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clerical Change to Nasdaq Rules

January 14, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2011, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to make clerical corrections to correct cross references within Rule 5705 of to [sic] the Nasdaq rulebook. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to make a clerical correction to the Nasdaq rulebook. Specifically, Nasdaq proposes that in Nasdaq Rule 5705 that all references to Rule 5205 be changed to Rule 5705. Nasdaq is making this change due to an inadvertent clerical error in the original filing adopting this rule.[3] Nasdaq is making no other changes to Nasdaq Rule 5705.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change makes a minor clerical change to an existing Nasdaq rule.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder,[7] Nasdaq has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, Nasdaq believes that its proposal should become immediately effective.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–NASDAQ–2011–009 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–NASDAQ–2011–009. 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 website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–NASDAQ–2011–009, and should be submitted on or before February 15, 2011.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–1433 Filed 1–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

**(OMB)**

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

**(SSA)**

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 28, 2011. Individuals can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

*Request for Evidence from Doctor or Hospital—20 CFR 404 Subpart I and 20 CFR 416 Subpart P—0960–0722. Sections 223(d)(5)* and *1614(a)(3)(H)(i)* of the Social Security Act require claimants to furnish medical evidence of their disability when filing a disability claim. SSA uses Forms HA–66 and HA–67 to obtain medical evidence from sources (physicians, hospitals, *etc.*) who treated or evaluated the claimant. SSA uses the information to determine eligibility for benefits. The respondents are medical sources, doctors, and hospitals that evaluate the claimants.

Type of Request: Revision of an OMB-approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Number of responses | Average burden per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|---|
| HA–66 | | | | | |
| Paper Version | 3,060 | 22 | 67,320 | 15 | 16,830 |
| HA–66 Electronic Version | 8,940 | 22 | 196,680 | 15 | 49,170 |
| HA–67 Paper Version | 3,060 | 22 | 67,320 | 15 | 16,830 |
| HA–66 Electronic Version | 8,940 | 22 | 196,680 | 15 | 49,170 |
| Totals | 24,000 | | 528,000 | | 132,000 |

II. SSA has submitted the information collection listed below to OMB for clearance. Your comments on the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than February 24, 2011. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

*Continuing Disability Review Report—20 CFR 404.1589, 416.989—0960–0072.* SSA conducts periodic reviews to determine whether claimants continue to be disabled according to the Social Security Act and eligible for Title II or Title XVI payments. We obtain information, using SSA–454, on sources of medical treatment, participation in vocational rehabilitation programs, and attempts to work. We also ask individuals' opinions on whether their conditions have improved. SSA uses the information to make a continuing disability determination. The respondents are Title II and Title XVI disability recipients or their representatives.

Type of Request: Revision of an OMB-approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Total annual burden (hours) |
|---|---|---|---|---|
| SSA–454–BK (Paper version) | 1,500 | 1 | 60 | 1,500 |
| Electronic Disability Collect System (EDCS) 454 | 1,500 | 1 | 59 | 1,475 |
| SSA–454–ICR | 541,000 | 1 | 30 | 270,500 |
| Abbreviated EDCS interview to supplement SSA–454–ICR | 541,000 | | 25 | 225,417 |
| Totals | 1,085,000 | | | 498,892 |

[8] 17 CFR 200.30–3(a)(12).

Dated: January 19, 2011.

**Faye Lipsky,**

*Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.*

[FR Doc. 2011–1445 Filed 1–24–11; 8:45 am]

**BILLING CODE 4191–02–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2011–0009]**

### Service Contract Inventory and Corresponding Point of Contact Information Per Section 703 of Division C of the Fiscal Year (FY) 2010 Consolidated Appropriations Act

**AGENCY:** Social Security Administration.

**ACTION:** Notice.

**SUMMARY:** We are providing the Web site address (URL) for the Service Contract Inventory and the corresponding point of contact information per Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117.

**FOR FURTHER INFORMATION CONTACT:** Dennis Wilhite, Director, Office of Budget Execution and Automation, Office of Budget, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone (410) 966–6988, e-mail *Dennis.Wilhite@ssa.gov.*

**SUPPLEMENTARY INFORMATION:** Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117 requires executive agencies to prepare an annual inventory of their service contracts and make them available to the public. Our Web address (URL) for the service contract inventory is *http://www.socialsecurity.gov/sci.*

Dated: January 18, 2011.

**Michael G. Gallagher,**

*Deputy Commissioner for Budget, Finance and Management.*

[FR Doc. 2011–1378 Filed 1–24–11; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 7307]**

### 60-Day Notice of Proposed Information Collection: Form DS–1998E, Foreign Service Officer Test Registration Form

**AGENCY:** Department of State.

**ACTION:** Notice of Request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Registration for the Foreign Service Officer Test.
- *OMB Control Number:* 1405–0008.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Human Resources, HR/REE/BEX.
- *Form Number:* DS–1998E.
- *Respondents:* Registrants for the Foreign Service Officer Test.
- *Estimated Number of Respondents:* 30,000.
- *Estimated Number of Responses:* 30,000.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 60,000.
- *Frequency:* Thrice annually.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATES:** The Department will accept comments from the public up to 60 days from January 25, 2011.

**ADDRESSES:** You may submit comments by any of the following methods:

*E-mail: RosenberrySA@state.gov.*

*Mail (paper, disk, or CD–ROM submissions):* Sara Rosenberry, HR/REE/BEX, SA–44, 301 4th St., SW., Room 324, Washington, DC 20547.

*Fax:* (202) 923–6472.

**FOR FURTHER INFORMATION CONTACT:** Sara Rosenberry, Director, HR/REE/BEX, SA–44, 301 4th St., SW., Room 324, Washington, DC 20547, *tel:* (202) 203–5117.

**SUPPLEMENTARY INFORMATION:**

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

**Abstract of Proposed Collection**

Individuals registering for the Foreign Service Officer Test will complete a Registration Form that consists of an application form that includes information about their name, age, Social Security Number, contact information, sex, race, national origin, disability, education and work history, and military experience. The information will be used to prepare and issue admission to the Foreign Service Officer Test, to provide data useful for improving future tests, and to conduct research studies based on the test results.

**Methodology**

Responses are submitted electronically.

Dated: January 13, 2011.

**Ruben Torres,**

*Executive Director, HR/EX, Department of State.*

[FR Doc. 2011–1487 Filed 1–24–11; 8:45 am]

**BILLING CODE 4710–15–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. FHWA–2010–0154]**

### Notice of Funding Availability for Applications for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

**AGENCY:** Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

**ACTION:** Notice of funding availability.

**SUMMARY:** The DOT's TIFIA Joint Program Office (JPO) announces the availability of funding to support new applications for credit assistance. Under TIFIA, the DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects of regional or national significance. Projects must meet statutorily specified criteria to be selected for credit assistance.

Because demand for the TIFIA program can exceed budgetary resources, the DOT is utilizing periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the program objectives. This notice outlines the process that applicants must follow. This notice supersedes the notice published in the **Federal Register** on January 19, 2011, at 76 FR 3190.

**DATES:** For consideration, Letters of Interest must be submitted electronically via e-mail by 4:30 p.m.

EST on March 1, 2011, using the revised form on the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.* Applicants that have previously submitted Letters of Interest must resubmit an updated letter as outlined below.

The application due date will be established after consultation between the TIFIA JPO and the applicant.

**ADDRESSES:** Submit all Letters of Interest to the attention of Mr. Duane Callender at: *TIFIACredit@dot.gov.* Submitters should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via e-mail, as provided above, shall be deemed properly filed.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice please contact Duane Callender via e-mail at *TIFIACredit@dot.gov* or via telephone at 202–366–9644. A TDD is available at 202–366–7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/.*

**SUPPLEMENTARY INFORMATION:**

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I. Background
II. Eligible Projects
III. Types of Credit Assistance
IV. Threshold Requirements
V. Rating Opinions
VI. Letters of Interest and Applications
VII. Fees
VIII. Selection Criteria
IX. Program Funding

## I. Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat.107, 241, (as amended by sections 1601–02 of Pub. L. 109–59) established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. The TIFIA regulations (49 CFR part 80) provide specific guidance on the program requirements.[1] On January 5, 2001, at 65 FR 2827, the Secretary of Transportation (Secretary) delegated to the FHWA the authority to act as the Executive Agent for the TIFIA program (49 CFR 1.48(b)(6)). The TIFIA JPO, an organizational unit in the FHWA Office of Innovative Program Delivery, has responsibility for coordinating program implementation.

[1] The TIFIA regulations have not been updated to reflect changes enacted in Public Law 109–59, SAFETEA–LU. Where the statute and the regulation conflict, the statute takes precedence. See the TIFIA Program Guide for updated program information.

## II. Eligible Projects

Highway, passenger rail, transit, bridge, intermodal projects, and intelligent transportation systems may receive credit assistance under TIFIA. Additionally, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144) enacted in 2005 expanded eligibility to private rail facilities providing public benefit to highway users and surface transportation infrastructure modifications necessary to facilitate direct intermodal transfer and access into and out of a port terminal. See the revised definition of "project" in 23 U.S.C. 601(a)(8) and Chapter 3 of the TIFIA Program Guide for a description of eligible projects (*http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm*).

## III. Types of Credit Assistance

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in 23 U.S.C. 601 and 49 CFR 80.3. Subject to certain conditions, the TIFIA credit facility can hold a subordinate lien on pledged revenues. The maximum amount of TIFIA credit assistance to a project is 33 percent of eligible project costs.

## IV. Threshold Requirements

Projects seeking TIFIA assistance must meet certain statutory threshold requirements. Generally, the minimum size for TIFIA projects is $50 million of eligible project costs; however, the minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is $15 million. Each project seeking TIFIA assistance must apply to the DOT, and must satisfy the applicable State and local transportation planning requirements. Each application must identify a dedicated revenue source to repay the TIFIA loan, and each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. These eligibility requirements are detailed in 23 U.S.C. 602(a) and Chapter 3 of the TIFIA Program Guide (*http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm*).

## V. Rating Opinions

The senior debt obligations for each project receiving TIFIA credit assistance must obtain an investment grade rating from at least one nationally recognized credit rating agency, as defined in 23 U.S.C. 601(a)(10) and 49 CFR 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade rating.

To demonstrate this potential, each application must include a preliminary rating opinion letter from a credit rating agency that addresses the creditworthiness of the senior debt obligations funding the project (i.e., debt obligations which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the default risk of the TIFIA credit instrument. The preliminary rating opinion letter must be based on the financing structure proposed by the applicant and must also conclude that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance.

Letters of Interest submitted pursuant to this notice do not need to include the preliminary rating opinion letter. Only those invited to submit applications will be required to obtain the preliminary rating opinion letter.

Each project selected for TIFIA credit assistance must obtain an investment grade rating on its senior debt obligations (which may be the TIFIA credit facility) and a revised opinion on the default risk of the TIFIA credit instrument before the FHWA will execute a credit agreement and disburse funds. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA Web site at *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.*

## VI. Letters of Interest and Applications

Because the demand for credit assistance can exceed budgetary resources, the DOT is utilizing periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program objectives.

Applicants seeking TIFIA credit assistance must submit a Letter of Interest describing the project fundamentals and addressing the TIFIA selection criteria. For consideration in this funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST via e-mail at: *TIFIACredit@dot.gov* on

March 1, 2011, using the revised form on the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.* Applicants that have previously submitted Letters of Interest must resubmit an updated letter using the revised form. For the purpose of completing its evaluation, the TIFIA JPO staff may contact an applicant regarding specific information in the Letter of Interest.

A public agency that seeks access to TIFIA on behalf of multiple competitors for a project concession must submit the project's Letter of Interest. Although the public agency would not become the TIFIA borrower, nor even have yet identified the TIFIA applicant, it must provide information sufficient for the DOT to evaluate the project against the TIFIA program objectives. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

After concluding its review of the Letters of Interest, the DOT will invite complete applications (including the preliminary rating opinion letter and detailed plan of finance) for the highest-rated projects according to the selection criteria detailed in Section VIII below. The application due date will be established after consultation between the TIFIA JPO and the applicant.

An invitation to apply for credit assistance does not guarantee the DOT's approval, which will remain subject to evaluation based on TIFIA's statutory credit requirements and established standards in addition to the successful negotiation of all terms and conditions.

## VII. Fees

There is no fee to submit a Letter of Interest. Unless otherwise indicated in a subsequent notice published in the **Federal Register**, each invited applicant must submit, concurrent with its application, a non-refundable fee of $50,000, an amount based on historical costs incurred by the TIFIA JPO for financial advisory services to help evaluate TIFIA applications. The FHWA no longer accepts paper checks. Payments should be made via Automated Clearing House, at *https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=18446839.* For successful applicants, this fee will be credited toward final payment of a credit processing fee (also referred to as a transaction fee), to be assessed at financial close, to reimburse the TIFIA JPO for actual financial and legal costs.

For projects that enter credit negotiations, the DOT will require the borrower to pay at closing or within a specified period following closing, upon invoicing by the TIFIA JPO, an amount equal to the actual costs incurred by the TIFIA JPO in procuring the assistance of outside financial advisors and legal counsel through execution of the credit agreement(s) and satisfaction of all funding requirements of those agreements. In the event a final credit agreement is not executed, the borrower is still required to reimburse the DOT for the costs incurred. Typically, the amount of this credit processing fee has ranged from $200,000 to $300,000, although it has been greater for projects that require complex financial structures and extended negotiations.

The TIFIA JPO charges each borrower an annual fee for loan servicing activities associated with each TIFIA credit instrument. The current fee, adjusted annually per the Consumer Price Index, is $11,500 per year.

Finally, the TIFIA credit agreements will allow the TIFIA JPO to charge, as incurred, a monitoring fee equal to its costs of outside advisory services required to assist the TIFIA JPO in modifying or enforcing the agreement.

Applicants may not include any of the fees described above—or any expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter)—among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

## VIII. Selection Criteria

The eight TIFIA selection criteria are described in statute at 23 U.S.C. 602(b) and assigned relative weights via regulation at 49 CFR 80.15. The criteria are restated below with (where appropriate) language indicating how the DOT will interpret them. The DOT will give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region.

Listed in order of relative weight, the TIFIA selection criteria are as follows:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system. This includes consideration of livability: Providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.; economic competitiveness: Contributing to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods; and safety: Improving the safety of U.S. transportation facilities and systems and the communities and populations they impact. Relative weight: 20 percent.

(ii) The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment. Relative weight: 20 percent.

(iii) The extent to which the project helps maintain or protect the environment. This includes sustainability: Improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems, including the use of tolling or pricing structures to reduce or manage high levels of congestion on highway facilities and encourage the use of alternative transportation options; and the state of good repair: Improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials. Relative weight: 20 percent.

(iv) The creditworthiness of the project, including a determination by the Secretary of Transportation that any financing for the project has appropriate security features to ensure repayment. Relative weight: 12.5 percent.

(v) The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed. Relative weight: 12.5 percent.

(vi) The extent to which the project uses new technologies, including intelligent transportation systems, to enhance the efficiency of the project. Relative weight: 5 percent.

(vii) The amount of budget authority required to fund the Federal credit instrument made available under TIFIA. Relative weight: 5 percent.

(viii) The extent to which TIFIA assistance would reduce the contribution of Federal grant assistance to the project. Relative weight: 5 percent.

Note that, when evaluating the Letters of Interest, the information needed to address criterion (iv), creditworthiness, and criterion (vii), budget authority, is unlikely to be available in sufficient detail. Therefore, the DOT will not employ these two criteria when reviewing the Letters of Interest. However, DOT will consider these criteria when reviewing project applications.

## IX. Program Funding

The SAFETEA–LU authorized $122 million annually from the Highway Trust Fund for fiscal years 2005–2009 in

TIFIA budget authority to pay the subsidy cost of credit assistance. As of the publication date of this notice, extensions of the surface transportation reauthorization act have been enacted continuing highway programs that were authorized through fiscal year 2009, and the expectation is that Congress will reauthorize an equivalent amount of budget authority for the TIFIA program in the future Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years. The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget authority available in a given year may be less than the amount authorized for that fiscal year.

Consistent with the Federal Credit Reform Act of 1990 and the requirements of the Office of Management and Budget, the subsidy cost of a loan is affected by recovery assumptions, allowance for defaults, the borrower's interest rate, and fees. The factors that most heavily influence the subsidy cost of a TIFIA loan fall into the recoveries category (for example, the repayment pledge and whether the debt is senior or subordinate) and the allowance for defaults category (including the credit rating on the debt and the degree of back-loading). The borrower's interest rate will also affect the subsidy cost of the TIFIA loan. The final subsidy cost estimate is expressed as a percentage of the principal amount of the credit assistance.

**Authority:** 23 U.S.C. 601–609; 49 CFR 1.48(b)(6); 23 CFR Part 180; 49 CFR Part 80; 49 CFR Part 261; 49 CFR Part 640.

Issued on: January 20, 2011.

**Victor M. Mendez,**

*Federal Highway Administrator.*

[FR Doc. 2011–1460 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 10–06–C–00–BOS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at General Edward Lawrence Logan International Airport, East Boston, MA

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

**ACTION:** Request for comments, notice of Intent to Rule on a PFC application.

**SUMMARY:** This document requests public comment on the supplementary material provided by the applicant, Massachusetts Port Authority (Massport), in response to the FAA's requests for clarification of its application to impose and use a PFC at General Edward Lawrence Logan International Airport, East Boston, Massachusetts.

The FAA received additional documentation and information in support of Massport's PFC application, received April 15, 2010. The FAA is soliciting public comment on this supplementary material. Once received and following the FAA's review of any comments submitted pursuant to this notice, a Final Agency Decision is anticipated either approving or disapproving the application, in whole or in part, within 60 days of the date of this Notice. The ruling will be issued under the provisions of the 49 U.S.C. 40117 and 14 Code of Federal Regulations part 158 (14 CFR part 158).

**DATES:** Comments must be received on or before February 24, 2011.

**ADDRESSES:** Comments on this supplemental material may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Kinton, CEO and Executive Director of the Massachusetts Port Authority at the following address: One Harborside Drive, Suite 200S, East Boston, Massachusetts 02128.

**FOR FURTHER INFORMATION CONTACT:** Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts. Please call to set up an appointment.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at One Harborside Drive, Suite 200S, East Boston, Massachusetts 02128. Please contact Massport at (617) 561–1600 to set up an appointment.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the additional documentation provided by the applicant in response to the FAA's requests for clarification in support of Massport's application to impose and use a PFC at Boston-Logan International Airport,

The supplemental material includes all documentation provided to the FAA by April 15, 2010, which was the date of Massport's submission of its PFC application for collection and use of PFC revenue for various projects at Boston-Logan International Airport. The FAA will issue a decision on Massport's PFC application under the provisions of the 49 U.S.C. 40117 and 14 CFR part 158.

*Background:* On April 15, 2010, Massport submitted its application to impose and use a PFC at Boston-Logan International Airport

On May 25, 2010, the FAA sent a letter to Massport notifying it that the PFC application was substantially complete.

The FAA's decision making process on PFC applications may include publishing a notice in the **Federal Register** informing the public of the FAA's intention to rule on the pending application and inviting public comment on that application. Consideration is given to all comments submitted pursuant to the **Federal Register** Notice during FAA's deliberations on the application. The FAA responds to the substantive comments in its Final Agency Decision.

In conjunction with rendering its decisions on PFC applications, the FAA determines the PFC eligibility for each project, and whether the eligible projects are adequately justified. In reviewing the application submitted by Massport, the FAA discovered that further clarification would be helpful to make its required determinations.

Accordingly, the FAA asked Massport to clarify certain information on the eligibility of costs related to Project #42—Terminal "A" Development.

In response to the FAA's requests, Massport provided supplemental material in the form of e-mails, airline lease documents, written discussions of Massport's lease practices, and rates and charges information which includes facility rent calculations indicating the uses of PFC revenues.

Issued in Burlington, Massachusetts on January 6, 2011.

**Bryon H. Rakoff,**

*Manager, Planning and Program Branch, Airports Division, New England Region.*

[FR Doc. 2011–1411 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Commercial Space Transportation Advisory Committee—Closed Session

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Commercial Space Transportation Advisory Committee Special Closed Session.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), and Title 41 of the Code of Federal Regulations, section 102–3.160, notice is hereby given of a special closed session of the Commercial Space Transportation Advisory Committee (COMSTAC). The special closed session will be an administrative session for the Committee members to review the structure of COMSTAC's public meetings and discuss if the current structure is the most desirable arrangement of activities. The meeting will take place on Thursday, February 10, 2010, at the Washington Convention Center, 801 Mount Vernon Place NW., Washington, DC 20001, from 8 a.m. until 8:45 a.m.

**FOR FURTHER INFORMATION CONTACT:** Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 325, Washington, DC 20591, telephone (202) 267–8029, e-mail *susan.lender@faa.gov.*

Issued in Washington, DC, January 18, 2011.

**George C. Nield,**

*Associate Administrator for Commercial Space Transportation.*

[FR Doc. 2011–1410 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement: Multiple South and East Texas Counties, State of Texas

**AGENCY:** Federal Highway Administration (FHWA).

**ACTION:** Rescind Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The FHWA is issuing this notice to advise the public that the Notice of Intent to prepare a Tier One Environmental Impact Statement (EIS) for the proposed extension of Interstate Highway 69 (I–69) from near Laredo and the Lower Rio Grande Valley is rescinded. The original notice dated January 15, 2004 was published in the **Federal Register** Volume 69, number 10 and on pages 2382–2383. The original notice can be viewed electronically here: *http://edocket.access.gpo.gov/2004/04-866.htm.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory S. Punske, P.E., District Engineer (District B, South), Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701. Telephone (512) 536–5960.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas Department of Transportation (TxDOT), published a Notice of Intent in the **Federal Register** on January 15, 2004 (Volume 69, No. 10 Page 2382) and a Notice of Intent correction published on January 30, 2004 (Volume 69, No. 20, Page 4557) to prepare a Tier One EIS for the proposed extension of I–69 from near Laredo and the Lower Rio Grande Valley. The proposed Tier One EIS was to evaluate the National High Priority Corridor 18 and Corridor 20 systems. In addition, I–69 was also being evaluated as part of the Trans-Texas Corridor (TTC) system which would have included lanes for passenger vehicles, separate lanes for trucks, rail lines, and a utility corridor.

The I–69/TTC Tier One DEIS was released for public review and comment on November 13, 2007. A Notice of Availability (NOA) was published in the Texas Register on December 11, 2007 and in the **Federal Register** on December 14, 2007. TxDOT held public hearings on the Tier One DEIS in February and March of 2008. In June 2008, TxDOT informed the FHWA of their intent to eliminate the Tier One New Location Alternative and not advance it as an alternative for the I–69/TTC project. TxDOT further recommended that only the use of existing and planned transportation facilities be advanced as the preferred alternative. The basis for this decision centered on consideration of environmental and transportation planning factors in combination with the technical comments received on the Tier One DEIS. Also, on January 6, 2009, TxDOT unveiled *Innovative Connectivity in Texas/Vision 2009* which defined a new vision for TxDOT's corridor development process and resulted in the retirement of the Trans-Texas Corridor concept. As a result of the retirement of the TTC concept and TxDOT's intent to only evaluate the use of existing and planned facilities to develop I–69, the project described and being evaluated under the above mentioned notices is no longer under consideration. As a result, the above mentioned notices are rescinded.

Issued on: January 14, 2011.

**Gregory S. Punske,**

*District Engineer (District B, South), Austin, Texas.*

[FR Doc. 2011–1441 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2006–25756]**

### Commercial Driver's License (CDL) Standards; Volvo Trucks North America, Renewal of Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its final decision regarding Volvo Trucks North America's (Volvo) application for an exemption for Andreas Hamsten to enable him to continue to test-drive commercial motor vehicles (CMVs) in the United States without a commercial driver's license (CDL) issued by one of the States. FMCSA previously announced its decision to renew the exemption and requested comment on the decision. No comments were received.

**DATES:** This exemption is effective from June 18, 2010 through June 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Hydock, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption, including an exemption from the CDL requirements of 49 CFR 383.23, for a maximum 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381. FMCSA evaluated Volvo's application on its merits and decided to renew Andreas Hamsten's exemption for a two-year period, effective June 18, 2010, as previously announced in the **Federal Register** (75 FR 45198, August 2, 2010).

**Comments**

In the August 2 notice, FMCSA requested public comment on the renewal; the Agency received no comments.

**Terms and Conditions for the Exemption**

Based upon its evaluation of the application for an exemption, FMCSA granted Volvo a renewal of the exemption from the Federal CDL requirement in 49 CFR 383.23 for a period of 2 years from June 18, 2010 through June 18, 2012, for Andreas Hamsten to test-drive CMVs within the U.S. Mr. Hamsten's exemption is renewed subject to the following terms and conditions: (1) This exemption is valid only when Mr. Hamsten is acting within the scope of his employment by Volvo; (2) He and Volvo must adhere to drug and alcohol regulations, including testing, as provided by in 49 CFR part 382; (3) He and Volvo must adhere to driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the United States; (4) He is subject to all other provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 390–397) unless specifically exempted herein; (5) He must keep a copy of the exemption in the vehicle at all times for presentation to a duly authorized Federal, State, or local enforcement official; (6) Volvo must notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving this exempted driver; and (7) Volvo must notify FMCSA in writing if this driver is convicted of a disqualifying offense described in sections 383.51 or 391.15 of the FMCSRs.

This exemption will be valid for 2 years unless rescinded earlier by FMCSA. Mr. Hamsten's exemption will be rescinded if: (1) He fails to comply with the terms and conditions of the exemption; (2) The exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) Continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: January 5, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–1485 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–7363; FMCSA–2004–18885; FMCSA–2004–17984; FMCSA–2008–0340]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 20 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective February 5, 2011. Comments must be received on or before February 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) FMCSA–2000–7363; FMCSA–2004–18885; FMCSA–2004–17984; FMCSA–2008–0340, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

**Exemption Decision**

This notice addresses 20 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 20 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Bryant M. Adams
Ricky J. Childress
Walden V. Clarke
Thomas A. Crowell

Thomas E. Dewitt, Jr.
David L. Dykman
Clarence N. Florey, Jr.
Milan D. Frasier
Harold J. Haier
Timothy L. Kelly
Lewis A. Kielhack
David Lancaster
Thomas D. Laws
Joe A. Mcllroy
Harry J. McSuley, Jr.
Robert S. Metcalf
Elmer R. Miller
Richard L. Moreland
Ronald M. Scott
Jeremichael Steele

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 20 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 77066; 68 FR 1654; 69 FR 53493; 69 FR 71098; 69 FR 61292; 69 FR 62742; 69 FR 33997; 71 FR 62148; 71 FR 55820; 72 FR 1054; 73 FR 61925; 73 FR 75803; 73 FR 78421; 73 FR 65009; 74 FR 6209). Each of these 20 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 24, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 20 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 19, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–1483 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2002–12844; FMCSA–2004–17984; FMCSA–2006–26066; FMCSA–2006–24015]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 7 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective February 7, 2011. Comments must be received on or before February 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) FMCSA–2002–12844; FMCSA–2004–17984; FMCSA–2006–26066; FMCSA–2006–24015, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the

docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 7 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 7 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Thomas J. Boss
Fabian L. Burnett
Scott D. Goalder
Casey R. Johnson
Robert J. Johnson
Myriam Rodriguez
James E. Savage

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 7 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 67 FR 68719; 68 FR 2629; 68 FR 1654; 69 FR 61292; 69 FR 33997; 69 FR 71098; 69 FR 71100; 71 FR 14566; 71 FR 30227; 71 FR 63379; 72 FR 1053; 72 FR 1050; 72 FR 1054, 72 FR 5490, 74 FR 980). Each of these 7 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 24, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 7 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 19, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–1484 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2010–0354]**

### Qualification of Drivers; Exemption Applications; Vision

*Correction*

In notice document C1 2011–241 beginning on page 2190 in the issue of Wednesday, January 12, 2011, make the following correction:

On page 2190, in the third column, in the **DATES** section, in the third line, "January 12, 2012" should read "January 14, 2013".

[FR Doc. C1–2011–241 Filed 1–24–11; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system.

[Docket Number FRA–2010–0168]

*Applicant:* Union Pacific Railroad Company, Mr. William E. Van Trump, AVP Engineering—Signal/Comm./TCO, 1400 Douglas Street, Mail Stop 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance of the signal systems on the Warm Springs subdivision from milepost (MP) 8.3 thru MP 17.7 near San Jose, California. The discontinuance consists of the removal of an automatic block signal system between MP 8.3 and MP 17.4, and the removal of a traffic control system between MP 17.4 MP 17.7. The discontinuance consists of the removal of 17 signals in total, which will leave a number of hand-operated switches on the track within the application area without signal protection. The Control Point Arena, MP 17.4, consists of two controlled signals to be removed. There are no power-operated switches involved in the application. A distant signal will be installed on the Warm Springs subdivision in the approach to Control Point Julian, MP 17.7.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0168) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on January 19, 2010.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2011–1415 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 1, 2010. No comments were received.

**DATES:** Comments must be submitted on or before February 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Michael Pucci, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5167; FAX: 202–366–7485; or e-mail: *michael.pucci@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Requirements for Establishing U.S. Citizenship.

*OMB Control Number:* 2133–0012.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Shipowners, charterers, equity owners, ship managers.

*Forms:* Special Format.

*Abstract:* In accordance with 46 CFR part 355, shipowners, charterers, equity owners, ship managers, etc., seeking benefits provided by statute are required to provide on an annual basis, an Affidavit of U.S. Citizenship to the Maritime Administration (MARAD) for analysis. The Affidavits of U.S. Citizenship filed with MARAD will be reviewed to determine if the Applicants are eligible to participate in the programs offered by the agency.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Annual Estimated Burden Hours:* 2500 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

By Order of the Maritime Administrator.

Dated: January 19, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–1449 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[USCG–2010–0993]**

### Liberty Natural Gas LLC, Liberty Liquefied Natural Gas (LNG) Deepwater Port License Application

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of intent; notice of public meeting; request for comments.

**SUMMARY:** The Maritime Administration, in coordination with the U.S. Coast Guard, will prepare an environmental impact statement (EIS) as part of the environmental review of the Liberty Deepwater Port License Application. The application describes an offshore natural gas deepwater port facility that would be located approximately 16.2 miles off the coast of New Jersey and will connect via offshore pipeline to a 9.2 mile onshore pipeline. Publication of this notice begins a scoping process that will help identify and determine the scope of environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process and provides information on how to participate.

**DATES:** There will be a series of three public scoping meetings held in connection with the application. The first public meeting will be held in Rockaway Park, New York on February 8, 2011, from 6:30 p.m. to 8 p.m., and will be preceded by an open house from 5 p.m. to 6 p.m.

The second public meeting will be held in Long Branch, New Jersey on February 9, 2011, from 6:30 p.m. to 8 p.m., and will be preceded by an open house from 5 p.m. to 6 p.m.

The third public meeting will be held in Edison, New Jersey on February 10, 2011, from 6:30 p.m. to 8 p.m. and will be preceded by an open house from 5 p.m. to 6 p.m.

Each of the three public meetings may end later than the stated time, depending on the number of persons wishing to speak. Additionally, materials submitted in response to the request for comments on the license application must reach the Docket Management Facility by February 23, 2011.

**ADDRESSES:** The open house and public meeting in Rockaway Park will be held at Beach Channel High School, 100–00 Beach Channel Drive, Rockaway Park, NY 11694–2818, (718) 945–6900. The New York City Department of Education disclaims involvement in the open house and public meeting to be held on the premises of Beach Channel High School.

The open house and public meeting in Long Branch will be held at Long Branch Middle School, 350 Indiana Avenue, Long Branch, NJ 07740–6198, (732) 229–5533.

The open house and public meeting in Edison will be held atthe New Jersey Convention & Exposition Center at Raritan Center, Edison, 97 Sunfield Avenue, Edison, NJ 08837–3810, (732) 417–1400.

The license application, comments and associated documentation are available for viewing at the Federal Docket Management System (FDMS) Web site: *http://www.regulations.gov* under docket number USCG–2010–0993.

Docket submissions for USCG–2010–0993 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Ray Martin, U.S. Coast Guard, telephone: 202–372–1449, e-mail: *Raymond.W.Martin@uscg.mil,* or Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, telephone: 202–366–0926, e-mail: *Yvette.Fields@dot.gov.* If you have questions on viewing the Docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

#### Public Meeting and Open House

We invite you to learn about the proposed deepwater port at any of the above informational open houses, and to comment at any of the above public meetings on environmental issues related to the proposed deepwater port. Your comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS.

In order to allow everyone a chance to speak at a public meeting, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at a public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility (see Request for Comments).

Our public meeting locations are wheelchair-accessible. If you plan to attend an open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the U.S. Coast Guard (*see* **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

#### Request for Comments

We request public comments or other relevant information on environmental

issues related to the proposed deepwater port. The public meeting is not the only opportunity you have to comment. In addition to, or in place of attending a meeting, you can submit comments to the Federal Docket Management Facility during the public comment period (*see* **DATES**). We will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2010–0993.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to the Federal Docket Management Facility, *http://www.regulations.gov.*
- Fax, mail, or hand deliver to the Federal Docket Management Facility (*see* **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (*http://www.regulations.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS Web site, and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see PRIVACY ACT. You may view docket submissions at the Department of Transportation Docket Management Facility or electronically on the FDMS Web site (*see* **ADDRESSES**).

**Background**

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for the proposed Liberty Deepwater Port appears in the November 17, 2010 **Federal Register** (75 FR 70350.) The "Summary of the Application" from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's natural and human environmental impacts. The U.S. Coast Guard is the lead agency for determining the scope of this review, and in this case the U.S. Coast Guard has determined that review must include preparation of an Environmental Impact Statement. This notice of intent is required by 40 CFR 1501.7, and briefly describes the proposed action, possible alternatives, and our proposed scoping process. You can address any questions about the proposed action, the scoping process, or the Environmental Impact Statement to the U.S. Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

**Proposed Action and Alternatives**

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in "Summary of the Application" below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), or (2) denying the application, which for purposes of environmental review is the "no-action" alternative.

**Scoping Process**

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the Environmental Impact Statement. Scoping begins with this notice, continues through the public comment period (*see* **DATES**), and ends when the U.S. Coast Guard has completed the following actions:

- Invites the participation of Federal, State, and local agencies, any affected Indian tribe, the applicant, and other interested persons;
- Determines the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identifies and eliminates, from detailed study, those issues that are not significant or that have been covered elsewhere;
- Allocates responsibility for preparing EIS components;
- Indicates any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identifies other relevant environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the U.S. Coast Guard will prepare a draft EIS, and in conjunction with the Maritime Administration, will publish a **Federal Register** notice announcing public availability of the draft EIS. (If you want that notice to be sent to you, please contact the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.) You will have an opportunity to review and comment on the draft EIS. The Coast Guard will consider those comments, and then prepare the final EIS. As with the draft EIS, we will announce the availability of the final EIS, and once again give you an opportunity for review and comment.

**Summary of the Application**

Liberty Natural Gas, LLC, proposes to own, construct, and operate a natural gas deepwater port, known as Liberty Deepwater Port. It would be located approximately 16 miles off the coast of New Jersey to the east of Asbury Park in a water depth of approximately 100 to 120 feet. It will connect via offshore pipeline to a 9.2 mile onshore pipeline that will traverse through Perth Amboy, Woodbridge and Carteret in Middlesex County, New Jersey and terminate in Linden, Union County, New Jersey.

Liberty Deepwater Port would receive and transfer natural gas from purpose-built LNG regasification vessels (LNGRVs) with a total cargo tank capacity of approximately 145,000 $m^3$. The vessels would be equipped to vaporize LNG cargo to natural gas through onboard closed loop vaporization systems and odorize and meter gas for send-out by means of a Submerged Turret Loading™ (STL) Buoy system. When the vessels are not present, the buoy would be submerged on a special landing pad on the seafloor, 100–120 feet below the sea surface. The top of the buoy would be approximately 50–70 feet below the surface of the water.

Liberty Deepwater Port would consist of up to four Submerged Turret Loading™ (STL) Buoy systems. Each buoy system would connect to an 18-inch diameter pipeline, called a Lateral, at a pipeline end manifold (PLEM) installed on the seafloor. The Laterals would be approximately 0.6 miles to 1 mile in length. Natural gas would flow through each Lateral to the 36-inch diameter, 44.37 mile long Offshore Pipeline. The Offshore Pipeline would connect to a 36-inch diameter, 9.2 mile long Onshore Pipeline that would traverse through Perth Amboy, Woodbridge and Carteret in Middlesex County, New Jersey and terminate in Linden, Union County, New Jersey. The Onshore Pipeline would connect to Transco and TETCO pipeline systems.

The Liberty Deepwater Port would be installed in two phases, with the first two Submerged Turret Loading™ (STL) Buoy systems and accompanying onshore and offshore pipeline infrastructure proposed to be installed and operational by the end of 2013. The second phase, consisting of an additional pair of Submerged Turret Loading™ (STL) Buoy systems and

associated Laterals, would be constructed at a later date.

The Offshore Pipeline ultimately used by four STL Buoy systems will have a delivery capacity of approximately 2.4 billion cubic feet per day (bcf/d) of natural gas. Each LNGRV will have an average natural gas delivery capacity of 600 million cubic feet per day (MMcf/d) with a maximum capacity of 750 MMcf/d.

Liberty Natural Gas LLC is currently seeking Federal Energy Regulatory Commission (FERC) approval for the onshore pipelines. As required by FERC regulations, FERC will also maintain a docket for the FERC portion of the project. The docket number is CP11–10. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Choose "General Search" and enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FercOnlineSupport@ferc.gov* or call (866) 208–3676 or TYY, (202) 502–8659.

In addition, pipelines and structures, such as the Submerged Turret Loading™ (STL) Buoy systems, may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act which are administered by the U.S. Army Corps of Engineers (USACE).

Liberty Deepwater Port may also require permits from the Environmental Protection Agency (EPA) pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

The offshore and onshore pipelines will be included in the National Environmental Policy Act (NEPA) review as part of the deepwater port application process. FERC, EPA, and the USACE, among others, are cooperating agencies and will assist in the NEPA process as described in 40 CFR 1501.6. Also, these agencies may participate in the scoping meetings and will incorporate the EIS into their permitting processes. Comments sent to the FERC docket, or to the EPA, USACE, and/or other agencies will be incorporated into the DOT docket and considered as the EIS is developed to ensure consistency with the NEPA Process.

Should a license be issued, construction of the deepwater port would be expected to take approximately 18 months over a two-year period with startup of commercial operations following construction. The deepwater port would be designed, constructed, and operated in accordance with applicable codes and standards.

**Privacy Act**

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov.*

**Authority:** 49 CFR 1.66.

By Order of the Maritime Administrator.
Dated: January 19, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–1448 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011–0004]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FIRST CAST.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0004 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before February 24, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0004. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel FIRST CAST is:

*Intended Commercial Use of Vessel:* "Excursion charter fishing".

*Geographic Region:* "Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Washington D.C., Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida and their respective inland tributaries."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 19, 2011.

By Order of the Maritime Administrator.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–1452 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted regarding the Uniform Tire Quality Grading Standard (UTQGS) below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 22, 2010 [75 FR 65395].

**DATES:** Comments must be submitted on or before February 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hisham Mohamed at the National Highway Traffic Safety Administration, Office of International Policy, Fuel Economy and Consumer Programs (NVS–131), 1200 New Jersey Ave, SE., W43–437, Washington, DC 20590. Mr. Mohamed's telephone number is (202) 366–0307.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration

*Title:* 49 CFR Part 575.104; Uniform Tire Quality Grading Standard.

*OMB Number:* 2127–0519.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Part 575 requires tire manufacturers and tire brand name owners to submit reports to NHTSA regarding the UTQGS grades of all passenger car tire lines they offer for sale in the United States. This information is used by consumers of passenger car tires to compare tire quality in making their purchase decisions. The information is provided in several different ways to insure that the consumer can readily see and understand the tire grades: (1) The grades are molded into the sidewall of the tire so that they can be reviewed on both the new and old tires; (2) a paper label is affixed to the tread face of the new tires that provides the grades of that particular tireline along with an explanation of the grading system; (3) the tire manufacturer or brand name owner provides prospective purchasers of tires the information for each tire offered for sale at the particular location; (4) vehicle manufacturers include in the owner's manual of each vehicle the grade information for the tires with which the vehicle is equipped; (5) NHTSA compiles the grading information of all manufacturers' tirelines into a booklet that is available to the public both in printed form and on NHTSA's Web site.

*Affected Public:* All passenger car tire manufacturers and brand name owners offering passenger car tires for sale in the United States.

*Estimated Total Annual Burden:* NHTSA estimates that a cost of approximately $25.5 million to tire manufacturers is required to comply with this regulation.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: January 20, 2011.

**Joseph Carra,**

*Acting Associate Administrator for Rulemaking.*

[FR Doc. 2011–1462 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2010–0177; Notice 1]**

### OSRAM SYLVANIA Products, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

OSRAM SYLVANIA Products, Inc., (OSRAM SYLVANIA) [1], has determined that certain Type "H11 C" light sources that it manufactured fail to meet the requirements of paragraph S7.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* OSRAM SYLVANIA has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* dated August 24, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), OSRAM SYLVANIA has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of OSRAM SYLVANIA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

OSRAM SYLVANIA estimates that approximately 28,412 "H11 C" light sources(bulbs) that it manufactured on June 23 and 24, 2010 are affected. All of the affected light sources were manufactured by OSRAM GmbH, Industriestrasse, Herbrechtingen, Germany.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allows NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Paragraph S7.7 of FMVSS No. 108 requires in pertinent part:

S7.7 Replaceable light sources. Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements:

(a) If other than an HB Type, the light source shall be marked with the bulb marking designation specified for it in compliance with Appendix A or Appendix B of part 564 of this chapter. The base of each HB Type shall be marked with its HB Type designation. Each replaceable light source shall also be marked with the symbol DOT and with a name or trademark in accordance with paragraph S7.2* * *

OSRAM SYLVANIA described the noncompliance as the mismarking of type "H11 C" lighting sources as type "H11."

[1] OSRAM SYLVANIA Products, Inc., is organized under the laws of the State of Delaware and is a manufacturer and importer of replacement equipment.

In its petition OSRAM SYLVANIA argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The noncompliance in this case pertains solely to the failure of the subject light sources to meet the applicable markings requirements.

(2) "H11 C" light sources are designed to be completely interchangeable with the original "H11" light sources. When Philips Lighting B.V., submitted its modification to the "H11" light source specification that became the "H11 C" specification it certified that use of the "H11 C" light source will not create a noncompliance with any requirement of FMVSS No. 108 when used to replace "H11" light source in a headlamp certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards. Subject "H11 C" light sources are designed to conform to Part 564 Docket NHTSA 98–3397–81 including the additional requirements under IX. In other words, inadvertent installation of a subject "H11 C" light source in place of an "H11" light source—or vice versa—will not create a noncompliance with any of the performance or interchangeability requirements of FMVSS No. 108 (including beam pattern photometrics) or otherwise present an increased risk to motor vehicle safety.

(3) "H11 C" light sources have the same filament position, dimension and tolerances, capsule and capsule support dimensions, bulb base interchangeability dimensions, seal specifications, and electrical specifications as the "H11." The only difference between the "H11" light source and the "H11 C" light source is that the "H11 C" provides for the light transmitting portion of the glass wall to incorporate a color controlling optical filter in order to improve visibility.[2]

(4) The agency has concluded in previous similar petitions that a noncompliance is inconsequential when mismarked light sources are otherwise fully compliant with the performance requirements of the standard.

Supported by the above stated reasons, OSRAM SYLVANIA believes that the described FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

[2] Petition for "H11 C" Replaceable Light Sources Listing, Docket NHTSA 98–3397–81, November 1, 2007.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* February 24, 2011.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: January 18, 2011.

**Claude H. Harris,**

*Acting Associate Administrator for Enforcement.*

[FR Doc. 2011–1417 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2010–0178; Notice 1]**

### Mercedes-Benz USA, LLC and Daimler AG, Receipt of Petition for Decision of Inconsequential Noncompliance

Mercedes-Benz USA, LLC (MBUSA)[1] on behalf of itself and on behalf of its parent company Daimler AG (DAG) has determined that certain 2002–2009 G-Class multipurpose vehicles, equipped with headlamp grill shields, that were manufactured from September 2002 through August 2008, fail to meet the requirements of paragraph S7.8.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* MB has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* dated September 27, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MBUSA has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MB's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

MBUSA estimates that approximately 1,938 2002–2009 G-Class multipurpose passenger vehicles equipped with headlamp grill shields are affected. The vehicles were manufactured by its parent company DAG from September 2002 through August 2008.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to

[1] Mercedes-Benz USA, LLC (MBUSA), is organized under the laws of the state of Delaware. MBUSA is the importer of the subject vehicles and Daimler AG is the manufacturer of the vehicles. Daimler AG is organized under the laws of Germany.

exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Paragraph S7.8.5 of FMVSS No. 108 requires:

> S7.8.5 When activated in a steady-burning state, headlamps shall not have any styling ornament or other feature, such as a translucent cover or grill, in front of the lens. Headlamp wipers may be used in front of the lens provided that the headlamp system is designed to conform with all applicable photometric requirements with the wiper stopped in any position in front of the lens. When a headlamp system is installed on a motor vehicle, it shall be aimable with at least one of the following: An externally applied aiming device, as specified in S7.8.5.1; an on-vehicle headlamp aiming device installed by the vehicle or lamp manufacturer, as specified in S7.8.5.2; or by visual/optical means, as specified in S7.8.5.3.

MB described the noncompliance as the presence of protective grills mounted in front of the headlamps.

In its petition MBUSA argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The standard does not account for a headlamp grill that does not pose any risk of scratching or condensation buildup, force the beam to pass through an additional layer of glazing, or cause deterioration of photometric performance due to the presence of a grill. The design of the G-Class grill allows full luminosity, in compliance with the performance requirements of FMVSS No. 108 and creates no interference with the normal, long-term operation of the headlamps. Accordingly, as with the stated exception in FMVSS No. 108 for headlamp wipers, MBUSA petitions that this protected safety device, like wipers, should be allowed on the affected vehicles.

(2) The grills are attached with clamping screws to the vehicle body. The screws and grills do not touch the headlamp assemblies in any way, eliminating any possibility of scratching or cracking the headlamps. The grills also provide additional protection against environmental conditions to ensure long-term performance of the headlamps.

(3) Rather than degrade the long term luminosity of the headlamps, the grills promote performance by protecting the headlamps from debris and other environmental conditions.

(4) Photometric testing conducted in 2006 shows that the headlamps meet all performance requirements with the grills intact.

(5) DAG also tested headlamps that had been mounted on a vehicle with a grill since October 2006. The photometric performance of these headlamps still showed no accelerated deterioration nor any other indications of affected use.

(6) To date, MBUSA has received no reports of any concerns relating to the grills or any indications that the grills in any way interfere with the performance of the vehicle's lighting.

Supported by the above stated reasons, MB believes that the described FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays.

c. Electronically: By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment Closing Date:* February 24, 2011.

**Authority:** 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: January 18, 2011.

**Claude H. Harris,**

*Acting Associate Administrator for Enforcement.*

[FR Doc. 2011–1416 Filed 1–24–11; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

January 18, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding this information collection 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 February 24, 2011 to be assured of consideration.

### Community Development Financial Instutitions (CDFI) Fund

*OMB Number:* 1559–0025.

*Type of Review:* Revision a currently approved collection.

*Title:* Native American CDFI Assistance (NACA) Program Application.

*Form:* CDFI 0009.

*Description:* Through the Native American CDFI Assistance Program, the CDFI Fund will provide technical assistance to CDFIs already serving Native American communities as well as technical assistance to help Native American Communities form new CDFIs.

*Estimated Total Burden Hours:* 8,000 hours.

*CDFI Fund Clearance Officer:* Michael Jones, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (202) 622–2461.

*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. 2011–1517 Filed 1–24–11; 8:45 am]

**BILLING CODE 4810–70–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A, Form 1040EZ, Form 1040NR, Form 1040NR–EZ, Form 1040X, and All Attachments to These Forms

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ; Form 1040X; and all attachments to these forms (*see* the Appendix to this notice).

**DATES:** Written comments should be received on or before March 28, 2011 to be assured of consideration.

**ADDRESSES:** Direct all written comments to The OMB Unit, SE:W:CAR:MP:T:T:SP, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Chief, RAS:R:TAM, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

#### PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ”collection of information” that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Burden estimates for each control number are displayed in (1) PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

#### Taxpayer Burden Model

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with Federal tax laws and incorporates results from a survey of tax year 2007 individual taxpayers, conducted in 2008 and 2009. The approach to measuring burden focuses on the characteristics and activities undertaken by individual taxpayers in meeting their tax return filing obligations.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system and are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation fees, the purchase price of tax preparation software, submission fees, photocopying costs, postage, and phone calls (if not toll-free).

The methodology distinguishes among preparation method, taxpayer activities, taxpayer type, filing method, and income level. Indicators of tax law and administrative complexity, as reflected in the tax forms and instructions, are incorporated into the model.

Preparation methods reflected in the model are as follows:

- Self-prepared without software,
- Self-prepared with software, and
- Use of a paid preparer or tax professional.

Types of taxpayer activities reflected in the model are as follows:

- Recordkeeping,
- Tax planning,
- Gathering tax materials,
- Use of services (IRS and other),
- Form completion, and
- Form submission (electronic and paper).

#### Taxpayer Burden Estimates

Summary level results using this methodology are presented in Table 1 below. The data shown are the best forward-looking estimates available for income tax returns filed for tax year 2010. Note that the estimates presented in this table differ from those published in the tax form instructions and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

Table 1 shows burden estimates by form type and type of taxpayer. Time burden is further broken out by taxpayer activity. The largest component of time burden for all taxpayers is recordkeeping, as opposed to form completion and submission. In addition, the time burden associated with form completion and submission activities is closely tied to preparation method.

Both time and cost burdens are national averages and do not necessarily reflect a “typical” case. For instance, the average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ is estimated at 19 hours, with an average cost of $250 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 have an expected average burden of about 24 hours and $310; the average burden for taxpayers filing Form 1040A is about 9 hours and $130; and the average for Form 1040EZ filers is about 7 hours and $60. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer, and the geographic area.

The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

#### Proposed PRA Submission to OMB

*Title:* U.S. Individual Income Tax Return.

*OMB Number:* 1545–0074.

*Form Numbers:* Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ, Form 1040X; and all attachments to these forms (see the Appendix to this notice).

*Abstract:* These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

*Current Actions:* Changes in aggregate compliance burden estimates are explained in terms of three major components: Technical Adjustments, Statutory Changes, and Agency (IRS) Discretionary Changes and are presented in Table 2 below.

**Technical Adjustments**

Technical changes include refinements to the modeling methodology using the new survey data as well as the effects of the economic recovery and an increase in the number of taxpayers projected.

**Statutory Changes**

The primary drivers for the statutory changes are newly enacted legislation along with the expiration of many provisions of the American Recovery and Reinvestment Act of 2009. New legislation includes the Small Business Jobs Act of 2010; the Patient Protection and Affordable Care Act; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; and related legislations.

**IRS Discretionary Changes**

IRS discretionary changes include redesign of Form1040X, fees associated with new paid professional licensing requirements, changes in the delivery of form instructions and publications to taxpayers, and delayed filing resulting from late legislation.

These changes have resulted in an overall increase of 270,000,000 total hours and $650,000,000 in taxpayer burden previously approved by OMB.

*Type of Review:* Revision of currently approved collections.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 146,700,000.

*Total Estimated Time:* 2.701 billion hours (2,701,000,000 hours).

*Estimated Time per Respondent:* 19 hours.

*Total Estimated Out-of-Pocket Costs:* $35.193 billion ($35,193,000,000).

*Estimated Out-of-Pocket Cost per Respondent:* $250.

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 will 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: January 14, 2011.

**Yvette Lawrence,**

*IRS Supervisory Tax Analyst.*

## TABLE 1—ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

[The average time and costs required to complete and file Form 1040, Form 1040A, Form 1040EZ, their schedules, and accompanying forms will vary depending on individual circumstances. The estimated averages are:]

| Primary form filed or type of taxpayer | Percentage of returns | Average time burden (hours) | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Total time* | Record keeping | Tax planning | Form completion | Form submission | All other | Average cost (dollars)** |
| All taxpayers | 100 | 19.0 | 9.0 | 2.0 | 4.0 | 1.0 | 3.0 | $250 |
| Primary forms filed: | | | | | | | | |
| 1040 | 70 | 24.0 | 11.0 | 3.0 | 5.0 | 1.0 | 3.0 | 310 |
| 1040A | 19 | 9.0 | 3.0 | 1.0 | 2.0 | 1.0 | 1.0 | 130 |
| 1040EZ | 11 | 7.0 | 2.0 | 1.0 | 2.0 | 1.0 | 1.0 | 60 |
| Nonbusiness*** | 69 | 12.0 | 5.0 | 2.0 | 3.0 | 1.0 | 2.0 | 160 |
| Business*** | 31 | 34.0 | 18.0 | 4.0 | 6.0 | 1.0 | 4.0 | 430 |

*Detail may not add to total time due to rounding.

**Dollars rounded to the nearest $10.

***You are considered a "business" filer if you file one or more of the following with Form 1040: Schedule C, C–EZ, E, or F or Form 2106 or 2106–EZ. You are considered a "nonbusiness" filer if you did not file any of those schedules or forms with Form 1040 or if you file Form 1040A or 1040EZ.

**Note:** Estimates presented in this table differ from those published in the tax forms and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

TABLE 2—ICB ESTIMATES FOR THE 1040/A/EZ/NR/NR–EZ/X SERIES OF RETURNS AND SUPPORTING FORMS AND SCHEDULES

[FY 2011]

| | Previously approved FY10 | Program change due to adjustment | Program change due to new legislation | Program change due to agency | FY11 |
|---|---|---|---|---|---|
| Number of Taxpayers | 143,400,000 | 3,300,000 | - | - | 146,700,000 |
| Burden in Hours | 2,431,000,000 | 292,000,000 | (25,000,000) | 3,000,000 | 2,701,000,000 |
| Burden in Dollars | 31,543,000,000 | 3,986,000,000 | (370,000,000) | 34,000,000 | 35,193,000,000 |

**Note:** Estimates presented in this table differ from those published in the tax forms and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

APPENDIX

| Forms | Filed by individuals and others | Title |
|---|---|---|
| 673 | | Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911. |
| 926 | X | Return by a U.S. Transferor of Property to a Foreign Corporation. |
| 970 | X | Application To Use LIFO Inventory Method. |
| 972 | X | Consent of Shareholder To Include Specific Amount in Gross Income. |
| 982 | X | Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment). |
| 1040 | | U.S. Individual Income Tax Return. |
| 1040 SCH A | | Itemized Deductions. |
| 1040 SCH B | | Interest and Ordinary Dividends. |
| 1040 SCH C | X | Profit or Loss From Business. |
| 1040 SCH C–EZ | X | Net Profit From Business. |
| 1040 SCH D | | Capital Gains and Losses. |
| 1040 SCH D–1 | | Continuation Sheet for Schedule D. |
| 1040 SCH E | X | Supplemental Income and Loss. |
| 1040 SCH EIC | | Earned Income Credit. |
| 1040 SCH F | X | Profit or Loss From Farming. |
| 1040 SCH H | X | Household Employment Taxes. |
| 1040 SCH J | | Income Averaging for Farmers and Fishermen. |
| 1040 SCH R | | Credit for the Elderly or the Disabled. |
| 1040 SCH SE | | Self-Employment Tax. |
| 1040 A | | U.S. Individual Income Tax Return. |
| 1040ES (NR) | | U.S. Estimated Tax for Nonresident Alien Individuals. |
| 1040ES (PR) | | Estimated Federal Tax on Self Employment Income and on Household Employees (Residents of Puerto Rico). |
| 1040 ES–OCR–V | | Payment Voucher. |
| 1040 ES–OTC | | Estimated Tax for Individuals. |
| 1040 EZ | | Income Tax Return for Single and Joint Filers With No Dependents. |
| 1040 NR | | U.S. Nonresident Alien Income Tax Return. |
| 1040 NR–EZ | | U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents. |
| 1040 V | | Payment Voucher. |
| 1040 V–OCR–ES | | Payment Voucher. |
| 1040 X | | Amended U.S. Individual Income Tax Return. |
| 1045 | X | Application for Tentative Refund. |
| 1116 | X | Foreign Tax Credit. |
| 1127 | X | Application For Extension of Time For Payment of Tax. |
| 1128 | X | Application To Adopt, Change, or Retain a Tax Year. |
| 1310 | | Statement of Person Claiming Refund Due a Deceased Taxpayer. |
| 2106 | | Employee Business Expenses. |
| 2106 EZ | | Unreimbursed Employee Business Expenses. |
| 2120 | | Multiple Support Declaration. |
| 2210 | X | Underpayment of Estimated Tax by Individuals, Estates, and Trusts. |
| 2210 F | X | Underpayment of Estimated Tax by Farmers and Fishermen. |
| 2350 | | Application for Extension of Time To File U.S. Income Tax Return. |
| 2350 SP | | Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos. |
| 2439 | X | Notice to Shareholder of Undistributed Long-Term Capital Gains. |
| 2441 | | Child and Dependent Care Expenses. |
| 2555 | | Foreign Earned Income. |
| 2555 EZ | | Foreign Earned Income Exclusion. |
| 2848 | X | Power of Attorney and Declaration of Representative. |
| 3115 | X | Application for Change in Accounting Method. |

APPENDIX—Continued

| Forms | Filed by individuals and others | Title |
|---|---|---|
| 3468 | X | Investment Credit. |
| 3520 | X | Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. |
| 3800 | X | General Business Credit. |
| 3903 | | Moving Expenses. |
| 4029 | | Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits. |
| 4070 A | | Employee's Daily Record of Tips. |
| 4136 | X | Credit for Federal Tax Paid On Fuels. |
| 4137 | | Social Security and Medicare Tax on Unreported Tip Income. |
| 4255 | X | Recapture of Investment Credit. |
| 4361 | | Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners. |
| 4562 | X | Depreciation and Amortization. |
| 4563 | | Exclusion of Income for Bona Fide Residents of American Samoa. |
| 4684 | X | Casualties and Thefts. |
| 4797 | X | Sales of Business Property. |
| 4835 | | Farm Rental Income and Expenses. |
| 4852 | X | Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. |
| 4868 | | Application for Automatic Extension of Time To File Individual U.S. Income Tax Return. |
| 4868 SP | | Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos. |
| 4952 | X | Investment Interest Expense Deduction. |
| 4970 | X | Tax on Accumulation Distribution of Trusts. |
| 4972 | X | Tax on Lump-Sum Distributions. |
| 5074 | | Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI). |
| 5213 | X | Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit. |
| 5329 | | Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts. |
| 5405 | | First-Time Homebuyer Credit. |
| 5471 | X | Information Return of U.S. Persons With Respect To Certain Foreign Corporations. |
| 5471 SCH J | X | Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation. |
| 5471 SCH M | X | Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons. |
| 5471 SCH O | X | Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock. |
| 5695 | | Residential Energy Credits. |
| 5713 | X | International Boycott Report. |
| 5713 SCH A | X | International Boycott Factor (Section 999(c)(1)). |
| 5713 SCH B | X | Specifically Attributable Taxes and Income (Section 999(c)(2)). |
| 5713 SCH C | X | Tax Effect of the International Boycott Provisions. |
| 5754 | X | Statement by Person(s) Receiving Gambling Winnings. |
| 5884 | X | Work Opportunity Credit. |
| 6198 | X | At-Risk Limitations. |
| 6251 | | Alternative Minimum Tax—Individuals. |
| 6252 | X | Installment Sale Income. |
| 6478 | X | Credit for Alcohol Used as Fuel. |
| 6765 | X | Credit for Increasing Research Activities. |
| 6781 | X | Gains and Losses From Section 1256 Contracts and Straddles. |
| 8082 | X | Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR). |
| 8275 | X | Disclosure Statement. |
| 8275 R | X | Regulation Disclosure Statement. |
| 8283 | X | Noncash Charitable Contributions. |
| 8332 | | Release of Claim to Exemption for Child of Divorced or Separated Parents. |
| 8379 | | Injured Spouse Claim and Allocation. |
| 8396 | | Mortgage Interest Credit. |
| 8453 | | U.S. Individual Income Tax Declaration for an IRS e-file Return. |
| 8582 | X | Passive Activity Loss Limitations. |
| 8582 CR | X | Passive Activity Credit Limitations. |
| 8586 | X | Low-Income Housing Credit. |

APPENDIX—Continued

| Forms | Filed by individuals and others | Title |
|---|---|---|
| 8594 | X | Asset Acquisition Statement. |
| 8606 | | Nondeductible IRAs. |
| 8609–A | X | Annual Statement for Low-Income Housing Credit. |
| 8611 | X | Recapture of Low-Income Housing Credit. |
| 8615 | | Tax for Certain Children Who Have Investment Income of More Than $1,800. |
| 8621 | X | Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund. |
| 8621–A | X | Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company. |
| 8689 | | Allocation of Individual Income Tax To the Virgin Islands. |
| 8693 | X | Low-Income Housing Credit Disposition Bond. |
| 8697 | X | Interest Computation Under the Look-Back Method for Completed Long-Term Contracts. |
| 8801 | X | Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts. |
| 8812 | | Additional Child Tax Credit. |
| 8814 | | Parents' Election To Report Child's Interest and Dividends. |
| 8815 | | Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989. |
| 8818 | | Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989. |
| 8820 | X | Orphan Drug Credit. |
| 8821 | X | Tax Information Authorization. |
| 8822 | X | Change of Address. |
| 8824 | X | Like-Kind Exchanges. |
| 8826 | X | Disabled Access Credit. |
| 8828 | | Recapture of Federal Mortgage Subsidy. |
| 8829 | | Expenses for Business Use of Your Home. |
| 8832 | X | Entity Classification Election. |
| 8833 | X | Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b). |
| 8834 | X | Qualified Electric Vehicle Credit. |
| 8835 | X | Renewable Electricity and Refined Coal Production Credit. |
| 8838 | X | Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement. |
| 8839 | | Qualified Adoption Expenses. |
| 8840 | | Closer Connection Exception Statement for Aliens. |
| 8843 | | Statement for Exempt Individuals and Individuals With a Medical Condition. |
| 8844 | X | Empowerment Zone and Renewal Community Employment Credit. |
| 8845 | X | Indian Employment Credit. |
| 8846 | X | Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips. |
| 8847 | X | Credit for Contributions to Selected Community Development Corporations. |
| 8853 | | Archer MSAs and Long-Term Care Insurance Contracts. |
| 8854 | | Initial and Annual Expatriation Information Statement. |
| 8858 | X | Information Return of U.S. Persons With Respect to Foreign Disregarded Entities. |
| 8858 SCH M | X | Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities. |
| 8859 | | District of Columbia First-Time Homebuyer Credit. |
| 8860 | X | Qualified Zone Academy Bond Credit. |
| 8861 | X | Welfare-to-Work Credit. |
| 8862 | | Information to Claim Earned Income Credit After Disallowance. |
| 8863 | | Education Credits. |
| 8864 | X | Biodiesel Fuels Credit. |
| 8865 | X | Return of U.S. Persons With Respect To Certain Foreign Partnerships. |
| 8865 SCH K–1 | X | Partner's Share of Income, Credits, Deductions, etc. |
| 8865 SCH O | X | Transfer of Property to a Foreign Partnership. |
| 8865 SCH P | X | Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership. |
| 8866 | X | Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method. |
| 8873 | X | Extraterritorial Income Exclusion. |
| 8874 | X | New Markets Credit. |
| 8878 | | IRS e-file Signature Authorization for Form 4868 or Form 2350. |
| 8878 SP | | Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP). |

APPENDIX—Continued

| Forms | Filed by individuals and others | Title |
|---|---|---|
| 8879 | | IRS e-file Signature Authorization. |
| 8879 SP | | Autorizacion de firma para presentar la Declaracion por medio del IRS e-file. |
| 8880 | | Credit for Qualified Retirement Savings Contributions. |
| 8881 | X | Credit for Small Employer Pension Plan Startup Costs. |
| 8882 | X | Credit for Employer-Provided Childcare Facilities and Services. |
| 8885 | | Health Coverage Tax Credit. |
| 8886 | X | Reportable Transaction Disclosure Statement. |
| 8888 | | Allocation of Refund (Including Savings Bond Purchases). |
| 8889 | | Health Savings Accounts (HSAs). |
| 8891 | | U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans. |
| 8896 | X | Low Sulfur Diesel Fuel Production Credit. |
| 8898 | | Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession. |
| 8900 | X | Qualified Railroad Track Maintenance Credit. |
| 8903 | X | Domestic Production Activities Deduction. |
| 8906 | | Distills Spirits Credit. |
| 8907 | | Nonconventional Source Fuel Credit. |
| 8908 | | Energy Efficient Home Credit. |
| 8910 | | Alternative Motor Vehicle Credit. |
| 8911 | | Alternative Fuel Vehicle Refueling Property Credit. |
| 8914 | | Exemption Amount for Taxpayers Housing Midwestern Displaced Individuals. |
| 8915 | | Qualified Hurricane Retirement Plan Distribution and Repayments. |
| 8917 | | Tuition and Fees Deduction. |
| 8919 | | Uncollected Social Security and Medicare Tax on Wages. |
| 8925 | X | Report of Employer-Owned Life Insurance Contracts. |
| 8931 | X | Agricultural Chemicals Security Credit. |
| 8932 | X | Credit for Employer Differential Wage Payments. |
| 9465 | | Installment Agreement Request. |
| 9465 SP | | Solicitud para un Plan de Pagos a Plazos. |
| Notice 2006–52 | | |
| Notice 160920–05 | | Deduction for Energy Efficient Commercial Buildings. |
| Pub 972 Tables | | Child Tax Credit. |
| REG–149856–03 | | Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart. |
| SS–4 | X | Application for Employer Identification Number. |
| SS–8 | X | Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. |
| T (Timber) | X | Forest Activities Schedules. |
| W–4 | | Employee's Withholding Allowance Certificate. |
| W–4 P | | Withholding Certificate for Pension or Annuity Payments. |
| W–4 S | | Request for Federal Income Tax Withholding From Sick Pay. |
| W–4 SP | | Certificado de Exencion de la Retencion del Empleado. |
| W–4 V | | Voluntary Withholding Request. |
| W–7 | | Application for IRS Individual Taxpayer Identification Number. |
| W–7 A | | Application for Taxpayer Identification Number for Pending U.S. Adoptions. |
| W–7 SP | | Solicitud de Numero de Identicacion Personal del Contribuyente del Servicio de Impuestos Internos. |

| | |
|---|---|
| Forms Removed from this ICR: | Reason for removal: |
| W–5/W–5SP | AEIC is not valid for tax years beginning after 12/31/2010. P.L. 111–226, sec. 219. |
| 1040 ES/V OCR | Obsolete. |
| 4070 | Obsolete. |
| Forms Added to this ICR: | Justification for Addition: |
| W–7(COA) | T.D. 8671, 1996–1 C.B.314. |
| 5884–B | P.L. 111–147, section 102. |

[FR Doc. 2011–1409 Filed 1–24–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Summary of Precedent Opinions of the General Counsel

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Office of General Counsel involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters involving the same legal issues. The summary is published to provide the public, and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

**FOR FURTHER INFORMATION CONTACT:** Susan P. Sokoll, Law Librarian, Department of Veterans Affairs, 810 Vermont Avenue, NW. (026H), Washington, DC 20420, (202) 461–7623.

**SUPPLEMENTARY INFORMATION:** A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential and 38 CFR 14.507(b) specifies that precedential opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees, not only in the matter at issue, but also in future adjudications and appeals involving the same legal issues, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist Veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the Internet at *http://www4.va.gov/ogc/precedentopinions.asp.*

**VAOPGCPREC 5–2010**

*Questions Presented:*

Does 38 U.S.C. 3677(c)(7), which provides that "[n]o course of training will be considered bona fide if given to an eligible veteran or person who is already qualified by training and experience for the job" preclude approval of an on-the-job training (OJT) program for employees of State approving agencies (SAA) who are identified by contract as professional staff members responsible for approving programs of education or training?

*Held:*

Section 3677(c)(7) precludes approval of an OJT program for SAA employees who are identified by contract as professional staff members responsible for approving programs of education because these employees are already qualified by training and experience for the job. Because we have determined that all professional staff members responsible for approving programs of education or training are already qualified by training and experience for the job and, therefore, are not eligible for participation in an OJT program, it is not necessary to address the additional questions presented in B1 and B2 of your request.

*Effective Date:* September 10, 2010

**VAOPGCPREC 6–2010**

*Questions Presented:*

a. How does the June 18, 2010, Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" affect Department of Veterans Affairs (VA) benefit payments?

b. Does the Presidential Memorandum override in any way the procedural protections that are provided for in VA law and regulations, particularly the notice to claimants and beneficiaries and the opportunity for them to be heard that is afforded in connection with adjudicative actions denying their claims or reducing or discontinuing their current awards?

c. Does the Computer Matching and Privacy Protection Act of 1988 apply to the database matching requirements of the Presidential memorandum?

*Held:*

a. The June 18, 2010, Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" requires Federal agencies, including the Department of Veterans Affairs (VA), to review pre-payment and pre-award procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs before the release of Federal funds. The Presidential Memorandum relates only to the procedures VA must follow before making benefit payments or awards, not the statutory or regulatory criteria for determining eligibility for, or entitlement to, any benefit.

b. VA would treat the information obtained from the database review pursuant to the Presidential Memorandum in the same manner as information obtained from other sources. For a claimant denied an award or payment as a result of information disclosed in a database review, VA must summarize the information obtained through the database review in its decision notification and any statement of the case. In the case of information obtained from the database review that would result in the reduction or discontinuance of, or otherwise adversely affect, a current award of compensation, pension, or dependency and indemnity compensation, with certain exceptions, VA must, before issuing a decision, advise the beneficiary of the information received, the proposed effect that the information would have on the beneficiary's VA benefits, and the beneficiary's opportunity to submit evidence or have a hearing. Among the exceptions is that VA will send written notice to the beneficiary at the same time it takes an adverse action if the evidence reasonably indicates that a beneficiary is deceased.

c. The Computer Matching and Privacy Protection Act of 1988 applies to the database matching requirements of the Presidential Memorandum to the extent the databases that make up the Do Not Pay List are used to verify eligibility for, or entitlement to, VA benefits by virtue of a computerized comparison of two automated systems of records.

*Effective Date:* September 12, 2010.

Dated: January 19, 2011.

By Direction of the Secretary.

**Will A. Gunn,**

*General Counsel, Department of Veterans Affairs.*

[FR Doc. 2011–1486 Filed 1–24–11; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

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Part II

## Department of Health and Human Services

Centers for Disease Control and Prevention

Privacy Act of 1974; Report of Modified or Altered System of Records; Notices

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–19–0001, "Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Agency for Toxic Substances and Disease Registry (ATSDR), Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), Division of Health Studies.

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless ATSDR/CCEHIP receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–19–0001:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–19–0001 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** ATSDR/CCEHIP proposes to alter System of Records, No. 09–19–0001, "Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR." Records in this system are used to carry out the legislated environmental public health mandates of the Agency for Toxic Substances and Disease Registry (ATSDR). Specifically this information is used to: (1) Identify the public health threat caused by exposure to toxic and hazardous substances utilizing health outcome studies, epidemiologic studies, exposure investigations, and other health effects studies; and (2) establish and maintain national registries of persons exposed to toxic substances and persons with serious diseases and illnesses associated or potentially associated with exposure to toxic substances. Registries will have the additional purposes of tracking exposed individuals, keeping them informed of health effects of exposure, preventive measures and possible breakthroughs in treatment, along with serving as a centralized location for research data on these exposed individuals.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

### SYSTEM NUMBER: 09–19–0001

#### SYSTEM NAME:

Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

Division of Health Studies, Agency for Toxic Substances and Disease Registry (ATSDR), Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), 4770 Buford Highway, Building 106, Atlanta, GA 30341,

Division of Health Assessment and Consultation, ATSDR, CCEHIP, 4770 Buford Highway, Building 106, Atlanta, GA 30341,

Division of Regional Operations, ATSDR, CCEHIP, 4770 Buford Highway, Building 106, Atlanta, GA 30341,

Division of Toxicology and Environmental Medicine, ATSDR, CCEHIP, 4770 Buford Highway, Building 106, Atlanta, GA 30341–3724; and

Federal Records Center, 4712 Southpark Blvd., Ellenwood, GA 30294. Data are also located at contractor sites. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals exposed or potentially exposed to toxic or hazardous substances may include the following: (1) Selected persons living or having lived near a hazardous waste site, including facilities owned or operated by the United States; (2) persons exposed or potentially exposed to environmental hazards resulting from exposure to contaminated water, soil, air, or biota; (3) participants in health outcome studies (including exposure studies, symptom and disease prevalence studies, cluster investigations), and epidemiologic studies to determine the public health threat of exposure to hazardous or toxic substances; (4) registry participants with exposures associated with specific chemicals; (5) participants from sites of emergency activities, and other sites that are the subject of a citizen's petition; (6) persons working or having worked in response actions at hazardous waste sites or other occupational settings where exposure to hazardous substances occurred. The first five categories of persons above may include children as well as adults.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, (including length of time at current address), telephone number, date of birth, Social Security number, sex, current and past occupations, dates, pathways and routes of toxic or hazardous substance exposure or potential exposure, environmental sampling data, smoking history, results of medical and laboratory tests, records on biological specimens (*e.g.* blood, urine, *etc.*), and related documents such as

questionnaire responses. The specific type of records collected and maintained is determined by the needs of the individual registry or study.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

"Comprehensive Environmental Response, Compensation, and Liability Act of 1980" as amended by "Superfund Amendments and Reauthorization Act of 1986" (42 U.S.C. 9601, 9604); and the "Resource Conservation and Recovery Act of 1976" as amended in 1984 (42 U.S.C. 6901).

**PURPOSE(S):**

Records in this system are used to carry out the legislated environmental public health mandates of the Agency for Toxic Substances and Disease Registry (ATSDR). Specifically this information is used to: (1) Identify the public health threat caused by exposure to toxic and hazardous substances utilizing health outcome studies, epidemiologic studies, exposure investigations, and other health effects studies; and (2) establish and maintain national registries of persons exposed to toxic substances and persons with serious diseases and illnesses associated or potentially associated with exposure to toxic substances. Registries will have the additional purposes of tracking exposed individuals, keeping them informed of health effects of exposure, preventive measures and possible breakthroughs in treatment, along with serving as a centralized location for research data on these exposed individuals.

Records may be disclosed to the National Center for Environmental Health, CCEHIP, and Centers for Disease Control and Prevention (CDC), for laboratory analysis of samples and for collaborative efforts (*i.e.,* providing staff, performing statistical analysis, *etc.*) in coordinating investigations.

Records (*i.e.,* name, Social Security number, date of birth) may be disclosed to the National Center for Health Statistics, CDC to obtain a determination of vital status. Death certificates with the cause of death will then be obtained from Federal, State, or local agencies to enable ATSDR to: (1) Determine whether excess mortality is occurring among individuals exposed to toxic or hazardous substances; and (2) notify similarly exposed persons.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records may be disclosed to Department of Health and Human Services contractors to locate individuals exposed or potentially exposed to toxic or hazardous substances (*e.g.,* in the establishment of the National Exposure Registry), conduct interviews, perform medical examinations, collect and analyze biological specimens, evaluate and interpret data, and perform follow up health investigations so that the research purposes for which the records are collected may be accomplished. The contractor must comply with the requirements of the Privacy Act with respect to such records.

Records may be disclosed to Federal agencies such as the Environmental Protection Agency (EPA), State and local health departments, and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with exposures to hazardous or toxic substances, and to satisfy mandatory reporting requirements when applicable.

Records (i.e., name, Social Security number) may be disclosed to other Federal agencies and to missing person location agencies to obtain information to aid in locating individuals involved in these studies.

Records may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identified form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Disclosures may be made to a congressional office from the records of an individual, in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation initiated by EPA in collaboration with ATSDR, ATSDR may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent ATSDR. The types of litigative proceedings that ATSDR may request include the recovery of expenses incurred in cleanup operations at Superfund or Resource Conservation and Recovery Act sites, including program and staff costs.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claims, if successful, are likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be provided to the Social Security Administration by ATSDR, for the purpose of locating or tracking individuals, to accomplish the research or program purpose for which the records were collected.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders, computer tapes and disks (hard and floppy), CD–ROMs.

**RETRIEVABILITY:**

By name or Social Security number.

**SAFEGUARDS:**

The following special safeguards are provided to protect the records from inadvertent disclosure:

*Authorized Users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access to records is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of ATSDR or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected. A list of authorized users will be maintained by the system manager.

*Physical Safeguards:* Questionnaires, log books, and other source data are maintained in locked cabinets in locked rooms, and security guard service in buildings provide personnel screening of visitors. Access to the CDC Clifton Road facility where the mainframe computer is located (ATSDR utilizes the CDC mainframe computer) is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. The local fire department is located directly next door to the Clifton Road facility. The computer room is protected by an automatic sprinkler system, numerous automatic sensors (*e.g.,* water, heat, smoke, *etc.*) are installed, and a proper mix of portable fire extinguishers is located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. Computer workstations, lockable personal computers, and automated records are located in secured areas.

*Procedural Safeguards:* Protection for computerized records both on the mainframe and the ATSDR Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup files.

Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "an additional procedure" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. When possible, a backup copy of data is stored at an offsite location and a log kept of all changes to each file and all persons reviewing the file. Selected safeguards will be applicable to specific elements of the system, as appropriate. Additional safeguards may also be built into the program by the system analyst as warranted by the sensitivity of the specific data set.

ATSDR and contractor employees who maintain records are instructed in specific procedures to protect the security of records, and are to check with the system manager prior to making disclosure of data. When individually identified data are being used in a room, admittance at either ATSDR or contractor sites is restricted to specifically authorized personnel.

Appropriate Privacy Act provisions are included in contracts, and the ATSDR Project Director, contract officers, and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to ATSDR or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the ATSDR LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with the ATSDR Comprehensive Records Control Schedule (B–371). Current procedures allow the system manager to keep the records for 20 years unless needed for further study. Registry records will be actively maintained as long as funding is provided for by legislation. Retention periods vary depending on the type of record. Source documents for computer tapes or disks are disposed of when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate.

Records may be transferred to a Federal Records Center for storage when no longer needed for evaluation or analysis. Disposal methods include the paper recycling process, burning or shredding hard copy records, and erasing computer tapes and disks.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of Health Studies, Chamblee Bldg 106, Rm 3007, MS F57, ATSDR, CCEHIP, 4770 Buford Highway, Atlanta, GA 30341.

Director, Division of Health Assessment and Consultation, Chamblee Bldg 106, Rm 5007, MS F59, ATSDR, CCEHIP, 4770 Buford Highway, Atlanta, GA 30341.

Director, Division of Regional Operations, Chamblee Bldg 106, Rm 4112, MS F58, ATSDR, CCEHIP, 4770 Buford Highway, Atlanta, GA 30341.

Director, Division of Toxicology and Environmental Medicine, Chamblee Bldg. 101, Rm. 3118, MS F29, ATSDR, CCEHIP, 4770 Buford Highway, Atlanta, GA 30341–3724.

**NOTIFICATION PROCEDURE:**

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the above address. Persons who knowingly and willfully request or acquire a record pertaining to an individual under false pretenses are subject to criminal prosecution. Requesters in person must provide photo identification (such as driver's license) or other positive identification that would authenticate the identity of the individual making the request. Individuals who do not appear in person must submit a request which has been notarized to verify their identity. A parent or guardian who requests notification of, or access to, a minor's medical record must provide a birth certificate (or notarized copy), court order, or other competent evidence of guardianship. An individual who requests notification of or access to, a medical record shall at the time the request is made, designate in writing a responsible representative (who may be a physician, other health professional, or other responsible individual) who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

In addition, the following information should be provided when requesting notification: (1) Full name and Social Security number; and (2) nature of the study, or probable exposure or disease subregistry which might include the requester.

**RECORD ACCESS PROCEDURE:**

Same as the notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**CONTESTING RECORD PROCEDURE (REDRESS):**

Contact the system manager at the address specified above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Subject individuals, families of deceased individuals, concerned citizens associated with a particular site, State and local health departments, physicians' records, hospital records, Social Security Administration, Environmental Protection Agency and other agencies responsible for environmental public health.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 2010–33004 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0001, "Certifying Interpreting Physician File, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0001:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0001 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0001, "Certifying Interpreting Physician File, HHS/CDC/NIOSH." The main purpose is to certify physicians as qualified to interpret X-rays using the ILO system of classification for pneumoconiosis.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

### Department of Health and Human Services (HHS)

### Centers for Disease Control and Prevention (CDC)

National Institue for Occupational Safety and Health (NIOSH)

### Certifying Interpreting Physician File—Report of Modified or Altered System of Records

### Narrative Statement

### I. Background and Purpose of the System

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, 09–20–0001, "Certifying Interpreting Physician File, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The main purpose of this system is certify physicians as qualified to interpret X-rays using the ILO system of classification for pneumoconiosis.

### II. Authority for Maintenance of the System

The statutory authority for this system is given under the Federal Mine Safety and Health Act of 1977, Sections 203, "Medical Examinations" and 501, "Research" (30 U.S.C. 843, 951).

### III. Proposed Routine Use Disclosures of Data in the System

This System of Records contains information such as Name, address, and phone number supplied to coal operators and X-ray facilities so that they may contact physicians to do work for them. Physicians who have taken the

test to be certified to interpret X-rays under the Federal Mine Safety and Health Act of 1977. Records are also maintained on physicians who have attempted to obtain certification, but did not qualify.

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use".

The routine uses proposed for this System are compatible with the stated purpose of the System:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

4. In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

5. Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself is by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

**V. Safeguards**

NIOSH has safeguards in place for authorized users and monitors. The records in this System are stored in File folders, microcomputer files, computer tapes/disks and printouts, and microfilm. The records are retrieved by their name and/or Social Security number, which is optional and to be supplied on a voluntary basis. The records in this System will be maintained in locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening and escorting of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas. These practices are in compliance with the safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the NIOSH LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

NIOSH or contractor employees involved in patenting and licensing of HHS inventions or in keeping records of inventions made by HHS contractors and grantees. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected. Data is also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* Certifying Interpreting Physician File.

*OMB Control Number:* 09–20–0001.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33005 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Procurement and Grants Office (PGO), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0055, "Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget

(OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Procurement and Grants Office (PGO). Data is also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

Data is occasionally located at grantee sites as studies are developed, data collected, and reports written. A list of grantee sites where individually identified data is currently located is available upon request to the system manager.

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0055:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0055 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** PGO proposes to alter System of Records, No. 09–20–0055, "Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO." The purpose of this system is to review grant applications for research and training and to administer funded grants. This information is provided to the National Institutes of Health and to components of the Centers for Disease Control and Prevention (CDC) including NIOSH for review.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Procurement and Grants Office (PGO)

**Administrative Files For Research/Demonstration and Training Grants, and Cooperative Agreements Applications—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, 09–20–0055, "Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The purpose of this system is to review grant applications for research and training and to administer funded grants. This information is provided to the National Institutes of Health and to components of the Centers for Disease Control and Prevention (CDC) including NIOSH for review.

**II. Authority for Maintenance of the System**

The statutory authority for this system is given under the Occupational Safety and Health Act, Section 20, Research and Related Activities and Section 21, "Training and Employee Education" (29 U.S.C. 669, 670), and Notification of Breach Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information.

**III. Proposed Routine Use Disclosures of Data in the System**

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

1. Referrals may be made of assignments of research investigators and project monitors on specific research projects to the National Technical Information Service (NTIS), Depart of Commerce, to contribute to the Smithsonian Science Information Exchange.

2. To the cognizant audit agency for auditing.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and

necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

5. To qualified experts not within the definition of Department employees as prescribed in Department regulations for opinions as a part of the application review process.

6. To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant, cooperative agreement, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

7. To individuals and organizations deemed qualified by PHS to carry out specific research related to the review and award processes of PHS.

8. To the grantee institution relative to performance or administration under the terms and conditions of the award.

9. Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

10. To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself is by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

**V. Safeguards**

The records in this System are stored in File folders. The records in this System will be maintained in Locked cabinets in locked rooms, electronic anti-intrusion devices in operation at the Federal Records Center, 24-hour guard service in buildings, personnel screening of visitors. The records can only be accessed by authorized users, access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected. These practices are in compliance with, Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records. Procedural safeguards are in place and users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO.

*OMB Control Number:* 09–20–0055.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33006 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Divisions of Tuberculosis Elimination, National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0089, "Studies of Treatment of Tuberculosis and other Mycobacterioses HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Division of Tuberculosis Elimination, National Center for HIV, STD and TB Prevention (NCHSTP).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NCHSTP receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Records Number 09–20–0089:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0089 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer

(OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.

• Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCHSTP proposes to alter System of Records, No. 09–20–0089, "Studies of Treatment of Tuberculosis and other Mycobacterioses. HHS/CDC/NCHSTP." This System of Records will be used to: Determine the effectiveness and safety of a variety of treatments and preventive measures for tuberculosis and other mycobacterial diseases, determine the best measures against drug resistant tuberculosis, and monitor incidence of complications among individuals who have received preventive therapy, including isoniazid. Adults and children with tuberculosis or other mycobacterial diseases having been or currently being treated or observed by a limited number of participating local or county health departments, clinics, and hospitals (from 1959 until the present time), including those individuals in selected areas receiving preventive therapy with isoniazid therapy and/or other changes or BCG vaccinations, and patients for whom routine tuberculosis treatment is ineffective. Also included are contacts to tuberculosis patients, adults with inactive tuberculosis, and controls.

This System of Records Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: November 23, 2010.

**Thomas P. Madden,**

*Chief Information Security Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for HIV, STD and TB Prevention (NCHSTP)

**Studies of Treatment of Tuberculosis and Other Mycobacterioses—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0089, "Studies of Treatment of Tuberculosis and other Mycobacterioses, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

To determine the effectiveness and safety of a variety of treatments and preventive measures for tuberculosis and other mycobacterial diseases, to determine the best measures against drug resistant tuberculosis, and to monitor incidence of complications among individuals who have received preventive therapy, including isoniazid.

**II. Authority for Maintenance of the System**

The statutory authority for this system is given under the Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

**III. Proposed Routine Use Disclosures of Data in the System**

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The routine uses proposed for this System are compatible with the stated purpose of the System:

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to: (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

The Department is under contract with private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

Records may be disclosed to appropriate Federal agencies and

Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself is by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested

**V. Safeguards**

The records in this System are stored in File folders, computer tapes/disks, and CD–ROMs.

The records have the following safeguards in place:

*Authorized Users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located nearby. The computer room is protected by an automatic sprinkler system, automatic sensors (*e.g.,* water, heat, smoke, *etc.*) are installed, and portable fire extinguishers are located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. Security guard service in buildings provides personnel screening of visitors.

*Procedural Safeguards:* Protection for computerized records both on the mainframe and the National Center Local Area Network (LAN) include programmed verification of valid user identification code and password prior to logging on to the system, changed mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup files. To avoid inadvertent data disclosure, "degaussing" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* These practices are in compliance with the safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the National Center LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records in this System are retained and disposed of in accordance with the CDC Records Control Schedule. Records are maintained in agency for five years. Disposal methods include erasing computer tapes and burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Studies of Treatment of Tuberculosis and other Mycobacterioses, HHS/CDC/NCHSTP."

B. *OMB Control Number:* 09–20–0089.

C. *Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33007 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Tuberculosis Elimination, National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and

Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0090, "Studies of Testing for Tuberculosis and other Mycobacterioses, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Division of Tuberculosis Elimination, National Center for HIV, STD and TB Prevention (NCHSTP).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0090:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0090 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCHSTP proposes to alter System of Records, No. 09–20–0090, "Studies of Testing for Tuberculosis and other Mycobacterioses, HHS/CDC/NCHSTP." To study the diagnostic value of tests used to identify persons infected with M. tuberculosis or sensitized by other mycobacteria and persons with active mycobacterial disease. These records may also by used by the Food and Drug Administration in conducting research related to Investigational New Drugs (IND).

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center For HIV, STD and TB Prevention (NCHSTP)

**Studies of Testing for Tuberculosis and Other Mycobacterioses—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0090, "Studies of Testing for Tuberculosis and other Mycobacterioses, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

To study the diagnostic value of tests used to identify persons infected with M. tuberculosis or sensitized by other mycobacteria and persons with active mycobacterial disease. These records may also by used by the Food and Drug Administration in conducting research related to Investigational New Drugs (IND).

**II. Authority for Maintenance of the System**

The statutory authority for this system is given under the Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Test results will be returned to the collaborating physician or responsible hospital official.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to

accomplish the research or program purposes for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself is by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested

**V. Safeguards**

The records in this System are stored in File folders, computer tapes/disks, and CD–ROMs.

The records have the following safeguards in place:

*Authorized Users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located nearby. The computer room is protected by an automatic sprinkler system, automatic sensors (e.g., water, heat, smoke, etc.) are installed, and portable fire extinguishers are located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. Security guard service in buildings provides personnel screening of visitors.

*Procedural Safeguards:* Protection for computerized records both on the mainframe and the National Center Local Area Network (LAN) include programmed verification of valid user identification code and password prior to logging on to the system, changed mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup files. To avoid inadvertent data disclosure, "degaussing" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel.

Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* These practices are in compliance with the safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the National Center LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

Records are retained and disposed of in accordance with the CDC Records Control Schedule. Records are maintained in agency for five years. Disposal methods include erasing computer tapes and burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Studies of Testing for Tuberculosis and other Mycobacterioses, HHS/CDC/NCHSTP."

*OMB Control Number:* 09–20–0090.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33008 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0096, "Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memorandum (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information.

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Center for HIV, STD and TB Prevention (NCHSTP).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0096:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0096 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.

Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCHSTP proposes to alter System of Records, No. 09–20–0096, "Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCHSTP." To determine eligibility and provide medical benefits for participants and qualified family members.

This System of Records Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the **Federal Register** on December 27, 2010.

### Department of Health and Human Services (HHS)

*Centers for Disease Control and Prevention (CDC)*

National Center for HIV, STD and TB Prevention (NCHSTP)

### Records of Tuskegee Study Health Benefit Recipients—Report of Modified or Altered System of Records

### Narrative Statement

### I. Background and Purpose of the System

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0096 "Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memorandum (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information.

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

To determine eligibility and provide medical benefits for participants and qualified family members.

### II. Authority for Maintenance of the System

The statutory authority for this system is given under the Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

### III. Proposed Routine Use Disclosures of Data in the System

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the records, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual to learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in File folders, computer tapes/disks, and CD–ROMs.

The records have the following safeguards in place:

*Authorized Users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located nearby. The computer room is protected by an automatic sprinkler system, automatic sensors (*e.g.,* water, heat, smoke, etc.) are installed, and portable fire extinguishers are located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. Security guard service in buildings provides personnel screening of visitors.

*Procedural Safeguards:* Protection for computerized records both on the mainframe and the National Center Local Area Network (LAN) include programmed verification of valid user identification code and password prior to logging on to the system, changed mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup files. To avoid inadvertent data disclosure, "degaussing" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the National Center LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

Records are retained and disposed of in accordance with the CDC Records Control Schedule. Records are maintained in agency for five years. Disposal methods include erasing computer tapes and burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Special Reports are to be maintained permanently.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCHSTP."

*OMB Control Number:* 09–20–0096.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33009 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Quarantine, Medical Screening and Health Assessment Branch, Medical Screening Section, National Center for Infectious Diseases (NCID), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0102, "Alien Mental Waiver Program, HHS/CDC/NCID. HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Center for Infectious Diseases (NCID), Division of Quarantine, Medical Screening and Health Assessment Branch, Medical Screening Section.

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0102:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0102 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCID proposes to alter System of Records, No. 09–20–0102, "Alien Mental Waiver Program, HHS/CDC/NCID." To comply with the requirements of Section 212(g) of the Immigration and Nationality Act, the Centers for Disease Control and Prevention (CDC) must receive and maintain medical records on aliens who apply for waivers of inadmissibility due to a physical or mental disorder with associated harmful behavior. CDC is furnished with a copy of the alien's medical examination report and psychiatric/psychological evaluation and uses the information to process the initial applications for such waivers and for periodic medical surveillance and evaluation of individual cases.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for Infectious Diseases (NCID)

**Alien Mental Waiver Program—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0102 "Alien Mental Waiver Program, HHS/CDC/NCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

To comply with the requirements of Section 212(g) of the Immigration and Nationality Act, the Centers for Disease Control and Prevention (CDC) must receive and maintain medical records on aliens who apply for waivers of inadmissibility due to a physical or mental disorder with associated harmful behavior.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 325, "Examination of Aliens" (42 U.S.C. 252); and the Immigration and Nationality Act, Section 212(g), "Application for Waiver of Grounds of Inadmissibility" (8 U.S.C. 1182(g)).

**III. Proposed Routine Use Disclosures of Data in the System.**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used

for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Department of State (DOS) or Immigration and Naturalization Service (INS) obtains initial medical examinations and submits to the Division of Quarantine, CDC. Final diagnosis returned to submitter. Alien or sponsor furnishes copy of medical file to local health care facility in the United States.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed for a research purpose, when CDC is authorized to share information on aliens with the Social Security Administration to determine eligibility for benefits, pursuant to Section 1631(e) of the Social Security Act as amended by Public Law 103–296, or as otherwise provided for in the Social Security Act.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself is by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

**V. Safeguards**

The records in this System are stored in Individual File folders and can be retrieved by their name.

The records have the following safeguards in place:

*Authorized Users:* Access is granted to only a limited number of personnel, i.e., program manager and immediate support members, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards:* Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center.

*Procedural Safeguards:* Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

*Implementation Guidelines:* These practices are in compliance with the safeguards outlined with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

Records are maintained in agency for five years. Disposal methods include burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 10 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Alien Mental Waiver Program, HHS/CDC/NCID."

*OMB Control Number:* 09–20–0102.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33010 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Center for HIV, STD and TB Prevention (NCHSTP), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0103, "Alien Tuberculosis Follow-up Program, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Center for HIV, STD and TB Prevention (NCHSTP).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NCHSTP receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0103:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0103 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCHSTP proposes to alter System of Records, No. 09–20–0103, "Alien Tuberculosis Follow-up Program, HHS/CDC/NCHSTP." To provide a record system for the surveillance and periodic medical evaluation of immigrant aliens with tuberculosis.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for HIV, STD and TB Prevention (NCHSTP)

**Alien Tuberculosis Follow-Up Program—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0103, "Alien Tuberculosis Follow-up Program, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

To provide a record system for the surveillance and periodic medical evaluation of immigrant aliens with tuberculosis.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 325, "Examination of Aliens" (42 U.S.C. 252); and the Immigration and Nationality Act, Section 212(g), "Application for Waiver of Grounds of Inadmissibility" (8 U.S.C. 1182(g)).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Disclosure may be made to State health departments; city health departments or the courts, private physicians or other health care facilities that will provide medical care for the immigrant alien.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

CDC is authorized to share information on aliens with the Social Security Administration to determine eligibility for benefits, pursuant to Section 1631 (e) of the Social Security Act as amended by Public Law 103–296, or as otherwise provided for in the Social Security Act.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose

of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself is by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

**V. Safeguards**

The records in this System are stored in Card files and computer tapes/disks and printouts. The information can be retrieved by name, Alien Registration Number, and by year of birth.

The records have the following safeguards in place:

*Authorized Users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located nearby. The computer room is protected by an automatic sprinkler system, automatic sensors (e.g., water, heat, smoke, etc.) are installed, and portable fire extinguishers are located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. The 24-hour guard service in buildings provides personnel screening of visitors. Electronic anti-intrusion devices are in effect at the Federal Records Center.

*Procedural Safeguards:* Protection for computerized records both on the mainframe and the CIO Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and Vault Management System for secure off-site storage is available for backup tapes. To avoid inadvertent data disclosure, "degaussing" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; and Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records. Data maintained in CDC Atlanta's Processing Center are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications. The CIO LAN currently operates under Novell Netware v 4.11 and is in compliance with "CDC & ATSDR Security Standards for Novell File Servers."

NCID follows the following procedures as it relates to Retention and disposal of Federal records: Card files are maintained in agency for two years and destroyed by paper recycling process after 2 years. Computer file maintained 4 years at CDC. Records destroyed by erasing tape after 4 years.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Alien Tuberculosis Follow-up Program, HHS/CDC/NCHSTP."

*OMB Control Number:* 09–20–0103.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33011 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Scientific Resources Program, Material, Data and Specimen Handling Section, National Center for Infectious Diseases (NCID), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0106, "Specimen Handling for Testing and Related Data, HHS/CDC/NCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Center for Infectious Diseases (NCID), Scientific Resources Program, Material, Data and Specimen Handling Section.

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NCID receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0106:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0106 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCID proposes to alter System of Records, No. 09–20–0106, "Specimen Handling for Testing and Related Data, HHS/CDC/NCID." For documentation of test results which are returned to submitter. Used between specialty units for research purposes; and for epidemiological investigations, for epidemic causes, prevention, family groupings of diseases, and geographical location of specific diseases; also, used by epidemiologist and researchers in determining drug resistance of specific organisms.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for Infectious Diseases (NCID)

**Specimen Handling for Testing and Related Data—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0106 "Specimen Handling for Testing and Related Data, HHS/CDC/NCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

For documentation of test results which are returned to submitter. Used between specialty units for research purposes; and for epidemiological investigations, for epidemic causes, prevention, family groupings of diseases, and geographical location of specific diseases; also, used by epidemiologist and researchers in determining drug resistance of specific organisms.

**II. Authority For Maintenance of the System**

Public Health Service Act, Section 301, "Research and Investigation," (42 U.S.C. 241); and Sections 304, 306 and 308(d) which discuss authority to grant assurances of confidentiality for health research and related activities (42 U.S.C. 242 b, k, and m(d)).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or

her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself is by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in original form (file folders); microfilm copies and computer tapes/disks and printouts. The records are retrieved by name or designated number furnished by the submitter, CDC identifying number, and/or microfilm number.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located directly next door to the Clifton Road buildings. The computer room is protected by an automatic sprinkler system, automatic sensors (e.g., water, heat, smoke, etc.) are installed, and portable fire extinguishers are located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. The 24-hour guard service in buildings provides personnel screening of visitors. Electronic anti-intrusion devices are in effect at the Federal Records Center.

*Procedural Safeguards*—Protection for computerized records both on the mainframe and the CIO Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There is routine daily backup procedures and secure off-site storage is available for backup tapes. To avoid inadvertent data disclosure, "degaussing" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; and Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records. Data maintained in CDC Atlanta's Processing Center are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications. The CIO LAN currently operates under Novell Netware v 4.11 and is in compliance with "CDC & ATSDR Security Standards for Novell File Servers."

The records in this System are retained and disposed of in the following way: Records are maintained in agency for five years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling

process when 10 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Specimen Handling for Testing Related Data, HHS/CDC/NCID."
*OMB Control Number:* 09–20–0106.
*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.
B. *Agency Rules:* None.
C. *Exemption Requested:* None.
D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.
[FR Doc. 2010–33012 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Executive Systems and Fellowship Staff, Atlanta Human Resources Center (AHRC), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0112, "Fellowship Program and Guest Researcher Records, HHS/CDC/AHRC." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Atlanta Human Resources Center (AHRC), Scientific Resources Program, Material, Data and Specimen Handling Section.

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless AHRC receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0112:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0112 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** AHRC proposes to alter System of Records, No. 09–20–0112, ", Fellowship Program and Guest Researcher Records, HHS/CDC/AHRC." This system is utilized by the Centers for Disease Control and Prevention (CDC) officials for the purpose of review of applications and supporting documents in order to award fellowships; and for determinations regarding salary or stipend increases.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Atlanta Human Resources Center (AHRC)

**Fellowship Program And Guest Researcher Records Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0112 "Fellowship Program and Guest Researcher Records, HHS/CDC/AHRC." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

This system is utilized by the Centers for Disease Control and Prevention (CDC) officials for the purpose of review of applications and supporting documents in order to award fellowships; and for determinations regarding salary or stipend increases.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 207(g), 207(h), "Appointment of Personnel," Sections 208, "Pay and Allowances," and Section 301, "Research and Investigation" (42 U.S.C. 209(g), 209(h), 210 and 241).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Disclosure may be made to a congressional office from the record of

an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in file folders. Service fellow personnel data is also maintained in an automated database. The records in this System are retrieved by the name of the individual, fellow, or guest researcher.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Locked cabinets in locked rooms, electronic anti-intrusion devices in operation at the Federal Records Center (FCR), 24-hour guard service in buildings, personnel screening of visitors, access codes for automated database.

*Procedural Safeguards*—Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosure of data.

*Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13 of the HHS General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

The records in this System are retained and disposed of in the following way: Records are maintained in agency for two years. Disposal methods include burning or shredding paper materials or transferring records to the Federal Personnel Center where records are retained in accordance with retention schedules.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Fellowship Program and Guest Researcher Records, HHS/CDC/AHRC."

*OMB Control Number:* 09–20–0112.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33013 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0113, "Epidemic Investigation Case Records, HHS/CDC/NCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Center for Infectious Diseases (NCID).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NCID receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0113:

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

• *E-mail:* Include PA SOR number 09–20–0113 in the subject line of the message.

• *Phone:* 770/488–8660 (not a toll-free number).

• *Fax:* 770/488–8659.

• *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.

• *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.

• Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCID proposes to alter System of Records, No. 09–20–0113, "Epidemic Investigation Case Records, HHS/CDC/NCID." The record system is used by professional staff at the Centers for Disease Control and Prevention (CDC) for more complete knowledge of the disease/condition in the following ways: (1) An examination of existing files enables investigators to determine areas that have been adequately investigated and to specify those that might be pursued; or (2) records may later be examined in the light of future discoveries and proven associations so that relevant data collected at the time of the outbreak may be analyzed and reassessed. CDC may or may not request duplicate copies of these State and/or local health department records for further analysis following completion of the field investigation.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for Infectious Diseases (NCID)

**Epidemic Investigation Case Records—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0113 "Epidemic Investigation Case Records, HHS/CDC/NCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The record system is used by professional staff at the Centers for Disease Control and Prevention (CDC) for more complete knowledge of the disease/condition in the following ways: (1) An examination of existing files enables investigators to determine areas that have been adequately investigated and to specify those that might be pursued; or (2) Records may later be examined in the light of future discoveries and proven associations so that relevant data collected at the time of the outbreak may be analyzed and reassessed. CDC may or may not request duplicate copies of these State and/or local health department records for further analysis following completion of the field investigation.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 301, "Research and Investigation," (42 U.S.C. 241); Sections 304, 306, and 308(d), which discuss authority to maintain data and to provide assurances of confidentiality for health research and related activities (42 U.S.C. 242b, 242k, and 242m(d)); and Section 361, "Quarantine and Inspection, Control of Communicable Diseases," (42 U.S.C. 264).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

The following routine uses apply to all records in this system except those maintained under an assurance of confidentiality provided by Section 308(d) of the Public Health Service Act (unless expressly authorized in the consent form or stipulated in the Assurance Statement):

These records may be disclosed, i.e., returned to the State and/or local health departments in order for them to take measures to control, prevent, or treat disease and to conduct follow-up activities with patients and others contacted during the investigations. Private physicians may also be supplied pertinent medical information on their patients from these records.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to

respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

The first routine use permits an individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in file folders. Service fellow personnel data is also maintained in an automated database. The records in this System are retrieved by the name of the individual, fellow, or guest researcher.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Procedural Safeguards*—Protection for computerized records both on the mainframe and the National Centers' Local Area Networks (LAN)s includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available. To avoid inadvertent data disclosure, "an additional procedure" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the National Centers' LANs are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records in this System are retained and disposed of in the following way: Records are retained and disposed of in accordance with the CDC Records Control Schedule. Records are maintained in agency for four years. Disposal methods include erasing computer media, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Epidemic Investigation Case Records, HHS/CDC/NCID."

*OMB Control Number:* 09–20–0113.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33014 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Applied Research and Technology (DART), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC),

Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0117, "Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information.

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Institute for Occupational Safety and Health (NIOSH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0117:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0117 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0117, "Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH." The purpose of this system is to develop composite data summaries to support the development of criteria for occupational safety and health standards, and to provide other recommendations for improving worker safety and health.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Institute for Occupational Safety and Health (NIOSH)

**Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0117 "Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The purpose of this system is to develop composite data summaries to support the development of criteria for occupational safety and health standards, and to provide other recommendations for improving worker safety and health.

**II. Authority for Maintenance of the System**

Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); and the Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The routine uses proposed for this System are compatible with the stated purpose of the System:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems

desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are: (1) enforcement of a subpoena issued to an employer to provide relevant information; or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

The first routine use permits an individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in file folders. Service fellow personnel data is also maintained in an automated database. The records in this System are retrieved by the name of the individual, fellow, or guest researcher.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Locked cabinets in locked rooms, electronic anti-intrusion devices in operation at the Federal Records Center, security guard service in buildings, personnel screening of visitors.

*Procedural Safeguards*—Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

*Implementation Guidelines:* The safeguards outlined above in accordance with the Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual.

The records in this System are retained and disposed of in the following way: Personal identifiers are destroyed as soon as they are no longer necessary for the protection of the individuals involved. Records are maintained in agency for three years. Records are maintained according to the provisions of the CDC Records Control Schedule for NIOSH records. Disposal methods include burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH."

*OMB Control Number:* 09–20–0117.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33015 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Applied Research and Technology (DART), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0118, "Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need

to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Institute for Occupational Safety and Health (NIOSH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0118:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0118 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0118, "Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH." The purpose of this system is to determine the relationship between worker exposure to hazardous agents or stressors and occupational disease. This information is used to recommend procedures to reduce the incidence of occupational disease.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Institute for Occupational Safety and Health (NIOSH)

**Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0118 "Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The purpose of this system is to determine the relationship between worker exposure to hazardous agents or stressors and occupational disease. This information is used to recommend procedures to reduce the incidence of occupational disease.

**II. Authority for Maintenance of the System**

Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); and the Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The routine uses proposed for this System are compatible with the stated purpose of the System:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the

researchers' data security procedures will protect confidentiality.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

The first routine use permits an individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in file folders. Service fellow personnel data is also maintained in an automated database. The records in this System are retrieved by the name of the individual, fellow, or guest researcher.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Locked cabinets in locked rooms, electronic anti-intrusion devices in operation at the Federal Records Center, security guard service in buildings, personnel screening of visitors.

*Procedural Safeguards*—Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

*Implementation Guidelines:* The safeguards outlined above in accordance with the Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual.

The records in this System are retained and disposed of in the following way: Records are maintained in agency for three years. Personal identifiers are destroyed as soon as the system has stabilized, and statistical summaries can be run. Disposal methods include burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH."

*OMB Control Number:* 09–20–0118.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33016 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Center for Infectious Diseases (NCID), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0136, "Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Center for Infectious Diseases (NCID).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NCID receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0136:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0136 in the subject line of the message.

• *Phone:* 770/488–8660 (not a toll-free number).
• *Fax:* 770/488–8659.
• *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
• *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
• Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCID proposes to alter System of Records, No. 09–20–0136, "Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID." This record system enables Centers for Disease Control and Prevention (CDC) officials to better understand disease patterns in the United States, develop programs for prevention and control of health problems, and communicate new knowledge to the health community.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for Infectious Diseases (NCID)

**Epidemiologic Studies and Surveillance of Disease Problems—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0136 "Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

This record system enables Centers for Disease Control and Prevention (CDC) officials to better understand disease patterns in the United States, develop programs for prevention and control of health problems, and communicate new knowledge to the health community.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 301, "Research and Investigation," (42 U.S.C. 241); and Sections 304, 306 and 308(d) which discuss authority and provide assurances of confidentiality for health research and related activities (42 U.S.C. 242b, 242k, and 242m(d)).

**III. Proposed Routine Use Disclosures of Data in the System**

The following routine uses apply to all records in this system except those maintained under an assurance of confidentiality provided by Section 308(d) of the Public Health Service Act (unless expressly authorized in the consent form or stipulated in the Assurance Statement):

A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example,

in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in computer tapes/disks, printouts, CD–ROMs, and file folders. The records are retrieved by name and by identification number.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to authorized users, physical and procedural safeguards:

*Authorized users*—A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located directly next door to the Clifton Road facility. The computer room is protected by an automatic sprinkler system, numerous automatic sensors (*e.g.,* water, heat, smoke, etc.) are installed, and a proper mix of portable fire extinguishers is located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. Security guard service in buildings provides personnel screening of visitors.

*Procedural Safeguards*—Protection for computerized records both on the mainframe and the CIO Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There is routine daily backup procedures and secure off-site storage is available for backup tapes. To avoid inadvertent data disclosure, "degaussing" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are developed in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the National Centers' LANs are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records in this System are retained and disposed of in the following way: Records are retained and disposed of in accordance with the CDC Records Control Schedule. Record copy of study reports are maintained in agency from two to three years in accordance with retention schedules. Source documents for computer are disposed of when no longer needed by program officials. Personal identifiers may be deleted from records when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records are retained for 20 years; for longer periods if further study is needed.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID."

*OMB Control Number:* 09–20–0136.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33017 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Office of Global Program Support Services, Coordinating Office for Global Health (COGH), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0137, "Passport File, HHS/CDC/COGH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose

of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Coordinating Office for Global Health (COGH), Office of Global Program Support Services.

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless COGH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0137:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0137 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** COGH proposes to alter System of Records, No. 09–20–0137, "Passport File, HHS/CDC/COGH." To show status of passports of CDC employees who travel to foreign countries on official business.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Coordinating Office for Global Health (COGH)

**Passport File—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0137 "Passport File, HHS/CDC/COGH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

To show status of passports of CDC employees who travel to foreign countries on official business.

**II. Authority for Maintenance of the System**

Title 5, Government Organization and Employees (5 U.S.C. 301).

**III. Proposed Routine Use Disclosures of Data in the System.**

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

An individual may learn if a record exists about himself or herself by contacting the system manager at the above address. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in Coordinating Office for Global Health Local Area Network (LAN) files. The records are retrieved by name.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to only a limited number of Coordinating Office for Global Health (COGH) personnel and designated support staff of CDC, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—The system is backed up on a nightly basis with copies of the files stored off site. Security guard service in buildings provides personnel

screening of visitors. Computer work stations are in a secured area.

*Procedural Safeguards*—Protection for computerized records on the COGH Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. Users of individually identified data protect information from public scrutiny. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on the COGH LAN is in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records in this System are retained and disposed of in the following way: Records are retained and disposed of in accordance with the CDC Records Control Schedule.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Passport File, HHS/CDC/COGH."

*OMB Control Number:* 09–20–0137.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None

C. *Exemption Requested:* None

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33018 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Office of Workforce and Career Development (OWCD), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0138, "Epidemic Intelligence Service Officers Files, HHS/CDC/OWCD." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Office of Workforce and Career Development (OWCD).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless OWCD receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0138:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0138 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** OWCD proposes to alter System of Records, No. 09–20–0138, "Epidemic Intelligence Service Officers Files, HHS/CDC/OWCD."

The system is designed to process individual applications for the Epidemic Intelligence Service Officer program, and to assess a candidate's suitability for a position in the program.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Office of Workforce and Career Development (OWCD)

**Epidemic Intelligence Service Officers Files—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0138 "Epidemic Intelligence Service officers Files, HHS/CDC/OWCD." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The system is designed to process individual applications for the Epidemic Intelligence Service Officer program, and to assess a candidate's suitability for a position in the program.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 203, "Commissioned Corps" and Section 207, "Appointment of Personnel" (42 U.S.C. 204, 209).

**III. Proposed Routine Use Disclosures of Data in the System**

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The first routine use permits an individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in the file folders, computer tapes/disks, and CD–ROMs. The records are retrieved by name.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Hardcopy records are kept in locked cabinets in locked rooms, security guard service in buildings, personnel screening of visitors, copies of files stored in a separate secure off-site location.

*Procedural Safeguards*—The OWCD Local Area Network (LAN) uses security packages to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a daily basis. Protection for computerized records both on the mainframe and the OWCD LAN include programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup tapes. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the OWCD LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Epidemic Intelligence Service officers Files, HHS/CDC/OWCD."

*OMB Control Number:* 09–20–0138.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33019 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0147, "Occupational Health Epidemiological Studies and EEOICPA Program Records, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Institute for Occupational Safety and Health (NIOSH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0147:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0147 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0147, "Occupational health Epidemiological Studies and EEOICPA Program Records, HHS/CDC/NIOSH." Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases and injuries, to determine their causes, and to lead toward prevention of occupationally related diseases and injuries in the future. EEOICPA records are maintained to enable NIOSH to fulfill its dose reconstruction responsibilities under the Act.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Institute for Occupational Safety and Health (NIOSH)

**Occupational Health Epidemiological Studies and EEOICPA Program Records—Report of Modified or Altered System of Records**

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0147 "Occupational Health Epidemiological Studies and EEOICPA Program Records, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases and injuries, to determine their causes, and to lead toward prevention of occupationally related diseases and injuries in the future. EEOICPA records are maintained to enable NIOSH to fulfill its dose reconstruction responsibilities under the Act.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241); Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); the Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951) and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (42 U.S.C. 7384, *et seq.*)

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The routine uses proposed for this System are compatible with the stated purpose of the System and support the agency's evaluation of mortality and morbidity of occupationally related diseases and injuries, determination their causes prevention of occupationally related diseases and injuries in the future, and enable NIOSH to fulfill its dose reconstruction responsibilities under the EEOICPA.

Portions of records (name, Social Security number if known, date of birth, and last known address) may be disclosed to one or more of the sources selected from those listed in Appendix I, as applicable. This may be done for obtaining a determination regarding an individual's health status and last known address. If the sources determine that the individual is dead, NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State or local agency. If the individual is alive, NIOSH may obtain information on health status from disease registries or on last known address in order to contact the individual for a health study or to inform him or her of health findings. This information on health status enables NIOSH to evaluate whether excess occupationally related mortality or morbidity is occurring.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective

defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may also be disclosed when deemed desirable or necessary, to the Department of Justice, and/or the Department of Labor, to enable those Departments to effectively represent the Department of Health and Human Services and/or the Department of Labor in litigation involving the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

Records subject to the Privacy Act are disclosed to private firms for data entry, scientific support services, nosology coding, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Certain diseases or exposures may be reported to State and/or local health departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigation proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; and (2) administrative search warrants to obtain access to places of employment and relevant information therein and related contempt citations against an employer for failure to comply with a warrant obtained by the Institute; and (3) injunctive relief against employers or mine operators to obtain access to relevant information.

Disclosure may be made to NIOSH collaborating researchers (*e.g.,* NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

Disclosure of epidemiologic study records pertaining to uranium workers may be made to the Department of Justice to be used in determining eligibility for compensation payments to the uranium workers or their survivors.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Disclosure of records or portions of records may be made to a Member of Congress or a Congressional staff member submitting a verified request involving an individual who is entitled to the information and has requested assistance from the Member or staff member. The Member of Congress or Congressional staff member must provide a copy of the individual's written request for assistance.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**The Following Routine Uses Apply Only to EEOICPA Program Records**

Disclosure of dose reconstructions, epidemiologic study records and employment and medical information pertaining to Department of Energy employees and other cancer-related claimants covered under the Energy Employees Occupational Illness Compensation Program Act may be made to the Department of Labor to be used in determining eligibility for compensation payments to such claimants and in defending its determinations under the Act.

Disclosure of personal identifying information associated with cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be made to the Department of Energy, other Federal agencies, other government or private entities and to private-sector employers to permit these entities to retrieve records required to reconstruct radiation doses and to enable NIOSH to evaluate petitions for inclusion in the Special Exposure Cohort.

Completed dose reconstruction reports for cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be released to the Department of Energy and the Department of Labor to permit these entities to fulfill EEOICPA and HHS dose reconstruction regulation requirements to notify claimants of their dose reconstruction results.

Disclosure of personal identifying information associated with cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be made to identified witnesses as designated by the Office of Compensation Analysis and Support to assist NIOSH in obtaining information required to complete the dose reconstruction process and to enable NIOSH to evaluate petitions for inclusion in the Special Exposure Cohort.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System and support the agency's evaluation of mortality and morbidity of occupationally related diseases and injuries, determination their causes prevention of occupationally related diseases and injuries in the future, and enable NIOSH to fulfill its dose reconstruction responsibilities under the EEOICPA.

An individual may learn if a record exists about himself or herself by contacting the system manager at the above address. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents. A subject individual will be granted direct access to a medical record if the system manager determines direct access is not likely to have adverse effect on the subject individual.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures

that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are retained and disposed of in the following way: Records are retained and disposed of according to the provisions of the CDC Electronic Records Control Schedule for NIOSH records. Records are maintained in agency for three years after the close of the study. Records transferred to the Federal Records Center when no longer needed for evaluation and analysis are destroyed after 75 years for epidemiologic studies, unless needed for further study. Records from health hazard evaluations will be retained at least 20 years. EEOICPA program records are transferred to the Federal Records Center 15 years after the case file becomes inactive and are destroyed after 75 years. Paper files that have been scanned to create electronic copies are disposed of after the copies are verified. Disposal methods include erasing computer tapes and burning or shredding paper materials.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—A database software security package is utilized to control unauthorized access to the system. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff or contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Hard copy records are kept in locked cabinets in locked rooms. Guard service in buildings provides screening of visitors. The limited access, secured computer room contains fire extinguishers and an overhead sprinkler system. Computer workstations and automated records are located in secured areas. Electronic anti-intrusion devices are in operation at the Federal Records Center.

*Procedural Safeguards*—Data sets are password protected and/or encrypted. Protection for computerized records both on the mainframe and the NIOSH Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup tapes. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

Employees and contractor staff who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either government or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the NIOSH LAN are in compliance with OMB Circular A–130, Appendix III. The CDC LAN currently operates under a Microsoft Windows Server and is in compliance with applicable security standards.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Occupational Health Epidemiological Studies and EEOICPA Program Records, HHS/CDC/NIOSH."

*OMB Control Number:* 09–20–0147.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

**Appendix I—Potential Sources for Determination of Health Status, Vital Status and/or Last Known Address**

Military records
Appropriate State Motor Vehicle Registration Departments
Appropriate State Driver's License Departments
Appropriate State Government Division of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Worker's Compensation, Disability Insurance
Retail Credit Association follow-up
Veterans Administration files
Appropriate employee union or association records
Appropriate company pension or employment records
Company group insurance records
Appropriate State Vital Statistics Offices
Life insurance companies
Railroad Retirement Board
Area nursing homes
Area Indian Trading Posts
Mailing List Correction Cards (U.S. Postal Service)
Letters and telephone conversations with former employees of the same establishment as cohort member
Appropriate local newspaper (obituaries)
Social Security Administration
Internal Revenue Service
National Death Index
Centers for Medicare & Medicaid Services
Pension Benefit Guarantee Corporation
State Disease Registries
Commercial Telephone Directories

[FR Doc. 2010–33020 Filed 1–24–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0149, "Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Institute for Occupational Safety and Health (NIOSH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0149:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0149 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0149, "Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH." The purpose of this system is to investigate occupationally related diseases at workplaces identified as general industry, surface mining, or below ground mining operations and to determine the cause and prevention of such diseases.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Institute for Occupational Safety And Health (NIOSH)

**Morbidity Studies in Coal Mining, Metal and Non-Metal Mining and General Industry**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0149 "Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The purpose of this system is to investigate occupationally related diseases at workplaces identified as general industry, surface mining, or below ground mining operations and to determine the cause and prevention of such diseases.

**II. Authority for Maintenance of the System**

Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); Federal Mine Safety and Health Act, Sections 203, "Medical Examinations" and 501, "Research" (30 U.S.C. 843, 951); and the Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System and support the agency's mission:

Data may be sent to State Vital Statistics Divisions to obtain death certificates and to missing person location agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Data on the incidence of pneumoconiosis may be sent to the Mining Safety and Health Administration, Department of Labor.

Test data which indicate the existence of cancer may be provided to the State Cancer Registry where the State has a legally constituted cancer registry

program which provides for the confidentiality of information.

Certain communicable diseases may be reported to State and/or local health departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute; and (3) injunctive relief against employers or mine operators to obtain access to relevant information.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System and support the agency's mission:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

Individuals may contact the official at the address specified under System Manager above, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**V. Safeguards**

The records in this System are stored in computer cards, tapes/disks and printouts, microfiche, and manual files. The records in this System are retrieved by Name and/or assigned numerical identifier, plant name, and study are some of the indices used to retrieve records from this system. Social Security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Access to the facility is monitored, and controlled after hours, by a 24-hour guard service. Hard copy records are kept in locked cabinets in locked rooms. Access to the LAN computer room is controlled by a punch lock system. The local fire department is one mile from the facility, which is of structural steel and cement block construction, with pre-cast cement panels on the envelope. No combustible materials are used in the building construction, including all interior walls. Heat sensors are installed, and portable fire extinguishers are located throughout the computer room. The active system files are backed up on a weekly basis. The entire system is backed up, with copies of the files stored in a secure, fireproof safe in a separate location within the facility.

*Procedural Safeguards*—The NIOSH Local Area Network (LAN) computer system, located within the Morgantown facility, uses a security package to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a daily basis. Protection for computerized records both on the mainframe and the NIOSH Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and Vault Management System for secure off-site storage is available for backup tapes. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; and Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual. Data maintained in CDC Atlanta's Processing Center are in compliance with OMB

Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications. The CIO LAN currently operates under Novell v. 4.11 and is in compliance with "CDC & ATSDR Security Standards for Novell File Servers."

The records in this System are retained and disposed of in the following way: Master records for completed studies are maintained in agency until transferred to the National Archives. Source documents for computer data are disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Electronic records are maintained according to the provisions of the Records Control Schedule for NIOSH Electronic Records, which is consistent with the records maintenance requirements for other forms of records. Copies of notifications to workers/private physicians of needed medical attention and/or medical treatment are destroyed when no longer needed for administrative purposes, but may be retained for as long as seventy years. Paper records are destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH."

*OMB Control Number:* 09–20–0149.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:*

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33021 Filed 1–24–11; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0153, "Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Institute for Occupational Safety and Health (NIOSH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0153:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0153 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0153, "Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH." The purpose of this system is to investigate occupationally related diseases at workplaces identified as general industry, surface mining, or below ground mining operations, to determine the cause and prevention of such diseases, and to evaluate whether excess occupationally related mortality is occurring.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Appendix I—Potential Sources for Determination of Vital Status and/or Last Known Address**

Military records
Appropriate State Motor Vehicle Registration Departments
Appropriate State Driver's License Departments
Appropriate State Government Divisions of:
Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program,
Child Support, Board of Corrections, Aging, Indian Affairs, Worker's Compensation,
Disability Insurance
Veterans Administration files
Appropriate employee union or association records
Appropriate company pension or employment records
Company group insurance records
Appropriate State Vital Statistics Offices
Life insurance companies
Railroad Retirement Board
Area nursing homes
Area Indian Trading Posts
Mailing List Correction Cards (U.S. Postal Service)
Letters and telephone conversations with relatives

Letters and telephone conversations with former employees of the same establishment as cohort member
Appropriate local newspaper (obituaries)
Social Security Administration
Internal Revenue Service

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Institute for Occupational Safety and Health (NIOSH)

**Mortality Studies in Coal Mining, Metal and Non-Metal Mining and General Industry**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0153 "Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The purpose of this system is to investigate occupationally related diseases at workplaces identified as general industry, surface mining, or below ground mining operations, to determine the cause and prevention of such diseases, and to evaluate whether excess occupationally related mortality is occurring.

**II. Authority for Maintenance of the System**

Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); Federal Mine Safety and Health Act of 1977, Section 101, "Mandatory Safety and Health Standards" and Section 501, "Research" (30 U.S.C. 811, 951); and the Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System and support the agency's mission:

Data may be sent to State Vital Statistics Divisions to obtain death certificates and to missing person location agencies to find those individuals who cannot otherwise be located.

Portions of records (name, Social Security number if known, date of birth, and last known address) may be disclosed to one or more other sources selected from those listed in Appendix I, as applicable. This may be done for obtaining a determination as to whether or not an individual has died and, if alive, last known address. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State, or local agency. Cause of death enables NIOSH to evaluate whether excess occupationally related mortality is occurring.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute; and (3) injunctive relief against employers or mine operators to obtain access to relevant information.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

The records in this System are stored in computer cards, tapes/disks and printouts, microfiche, and manual files. The records in this System are retrieved by Name and/or assigned numerical identifier, plant name and study are some of the indices used to retrieve records from this system. Social Security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated

purpose of the System and support the agency's mission:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

Individuals may contact the official at the address specified under System Manager above, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**V. Safeguards**

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Access to the facility is monitored, and controlled after hours, by security guard service. Hard copy records are kept in locked cabinets in locked rooms. Access to the LAN computer room is controlled by a punch lock system. The local fire department is one mile from the facility, which is of structural steel and cement block construction, with pre-cast cement panels on the envelope. No combustible materials are used in the building construction, including all interior walls. Heat sensors are installed, and portable fire extinguishers are located throughout the computer room. The active system files are backed up on a weekly basis. The entire system is backed up, with copies of the files stored in a secure, fireproof safe in a separate location within the facility.

*Procedural Safeguards*—The NIOSH Local Area Network (LAN) computer system, located within the Morgantown facility, uses a security package to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a daily basis. Protection for computerized records both on the mainframe and the NIOSH Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup tapes. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the NIOSH LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records in this System are retained and disposed of in the following way: Master records for completed studies are maintained in agency until transferred to the National Archives. Source documents for computer data are disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Electronic records are maintained according to the provisions of the Records Control Schedule for NIOSH Electronic Records, which is consistent with the records maintenance requirements for other forms of records. Copies of notifications to workers/private physicians of needed medical attention and/or medical treatment are destroyed when no longer needed for administrative purposes, but may be retained for as long as seventy years. Paper records are destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH."

*OMB Control Number:* 09–20–0153.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33022 Filed 1–24–11; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of proposed altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0154, "Medical and Laboratory Studies, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB)

Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Institute for Occupational Safety and Health (NIOSH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0154:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0154 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0154, "Medical and Laboratory Studies, HHS/CDC/NIOSH." The purpose of this system is to perform medical and epidemiological research, statistical analysis, and to identify early indicators of occupationally related diseases (biochemical indices); data is given to other NIOSH units for biochemical and epidemiological studies.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Institute for Occupational Safety and Health (NIOSH)

**Medical and Laboratory Studies**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0154 "Medical and Laboratory Studies, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The purpose of this system is to perform medical and epidemiological research, statistical analysis, and to identify early indicators of occupationally related diseases (biochemical indices); data is given to other NIOSH units for biochemical and epidemiological studies.

**II. Authority for Maintenance of the System**

Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951); and the Occupational Safety and Health Act, Section 20, "Research and Related Activities" and Section 22(d), "Authority of Director, National Institute for Occupational Safety and Health" (29 U.S.C. 669, 671 (d)).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System and support the agency's mission:

Data may be sent to State Vital Statistics Divisions to obtain death certificates and to missing person location agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Certain communicable diseases may be reported to State and/or local health departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems

desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are: (1) enforcement of a subpoena issued to an employer to provide relevant information; or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System and support the agency's mission:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

Individuals should contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**V. Safeguards**

The records in this System are stored in computer tapes/disks and printouts, CD ROMs, microfilm, microfiche, and hard copy files, and the records in this System are retrieved by Name and case number are the indices used to retrieve records from this system.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized users*—Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Access to the facility is monitored, and controlled after hours, by security guard service. Hard copy records are kept in locked cabinets in locked rooms. Access to the LAN computer room is controlled by a punch lock system. The local fire department is one mile from the facility, which is of structural steel and cement block construction, with pre-cast cement panels on the envelope. No combustible materials are used in the building construction, including all interior walls. Heat sensors are installed, and portable fire extinguishers are located throughout the computer room. The active system files are backed up on a weekly basis. The entire system is backed up, with copies of the files stored in a secure, fireproof safe in a separate location within the facility.

*Procedural Safeguards*—The NIOSH Local Area Network (LAN) computer system, located within the Morgantown facility, uses a security package to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a daily basis. Protection for computerized records both on the mainframe and the NIOSH Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup tapes. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the NIOSH LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications

The records in this System are retained and disposed of in the following way: Master records for completed studies are maintained in agency until transferred to the National Archives. Source documents for

computer data are disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Electronic records, if any, are maintained according to the provisions of the records control schedule for NIOSH electronic records, which is consistent with the records maintenance requirements for other forms of records. Copies of notifications to workers/private physicians of needed medical attention and/or medical treatment are destroyed when no longer needed for administrative purposes, but may be retained for as long as seventy (70) years. Paper records are destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Medical and Laboratory Studies, HHS/CDC/NIOSH."

*OMB Control Number:* 09–20–0154.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33023 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Personal Protective Technology Laboratory (NPPTL), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0159, "Records of Subject in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Institute for Occupational Safety and Health (NIOSH), National Personal Protective Technology Laboratory (NPPTL).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NIOSH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0159:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0159 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NIOSH proposes to alter System of Records, No. 09–20–0159, "Records of Subject in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH." The purpose of this system is to permit acquisition of information related to certification and performance of personal protective equipment, and safety research studies.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Institute for Occupational Safety and Health (NIOSH)

**Records of Subject in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0159 "Records of Subject in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

The purpose of this system is to permit acquisition of information related to certification and performance of personal protective equipment, and safety research studies.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241); Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); and the Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951)

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Portions of records (name, Social Security number if known, date of birth, and last known address) may be disclosed to one or more sources selected from those listed in Appendix 1. This may be done to determine if the individual has died so that a death certificate can be obtained. Knowing the cause of death enables NIOSH to evaluate whether excess occupationally-related mortality is occurring.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigation proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; and (2) administrative search warrants to obtain access to places of employment and relevant information therein and related contempt citations against an employer for failure to comply with a warrant obtained by the Institute.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Disclosure may be made to NIOSH collaborating researchers (*e.g.,* NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

An individual may learn if a record exists about himself or herself by contacting the system manager at the above address. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion. A subject individual will be granted direct access to a medical record if the system manager determines direct access is not likely to have adverse effect on the subject individual.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in manual files, computer cards, tapes/disks and printouts, microfilm, index audiogram files, audiograms, and questionnaire forms. The records in this System are retrieved by name, assigned number, plant name, and year tested are some of the indices used to retrieve records from these systems. Other retrieval methods are utilized as individual research dictates.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized Users*—Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Locked cabinets in locked rooms, electronic anti-intrusion devices in operation at the Federal Records Center, security guard service in buildings, personnel screening of visitors.

*Procedural Safeguards*—The NIOSH Local Area Network (LAN) uses security packages to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a daily basis. Protection for computerized records both on the mainframe and the NIOSH LAN include

programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup tapes. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

*Implementation Guidelines:* The safeguards outlined above are in accordance with HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the NIOSH LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records in this System are retained and disposed of in the following way: Records are retained and disposed of according to the provisions of the CDC Records Control Schedule for NIOSH records. Records are maintained in agency while the approval and certification is active, at a minimum for three years. Personal identifiers are stripped from records when no longer needed. Disposal methods include burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Records of Subjects in Certification, Testing, Studies of Personal protective Devices, and Accident Investigations, HHS/CDC/NIOSH."

*OMB Control Number:* 09–20–0159.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

**Appendix I—Potential Sources for Determination of Health Status, Vital Status and/or Last Known Address**

Military records
Appropriate State Motor Vehicle Registration Departments
Appropriate State Driver's License Departments
Appropriate State Government Division of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Worker's Compensation, Disability Insurance
Retail Credit Association follow-up
Veterans Administration files
Appropriate employee union or association records
Appropriate company pension or employment records
Company group insurance records
Appropriate State Vital Statistics Offices
Life insurance companies
Railroad Retirement Board
Area nursing homes
Area Indian Trading Posts
Mailing List Correction Cards (U.S. Postal Service)
Letters and telephone conversations with former employees of the same establishment as cohort member
Appropriate local newspaper (obituaries)
Social Security Administration
Internal Revenue Service
National Death Index
Centers for Medicare & Medicaid Services
Pension Benefit Guarantee Corporation
State Disease Registries
Commercial Telephone Directories

[FR Doc. 2010–33024 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notification of Proposed Altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0160, "Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP." HHS is proposing adding the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

"To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance."

These records will be maintained by the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Coordinating Center for Health Promotion

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NCCDPHP receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0160:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0160 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCCDPHP proposes to alter System of Records, No. 09–20–0160, "Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP." This record system enables the Centers for Disease Control and Prevention (CDC) officials to develop and evaluate existing health promotion programs for disease prevention and control, and to communicate new knowledge to the health community for the implementation of such programs.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)

**Records of Subjects in Health Promotion and Educational Studies**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0160 "Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP." HHS is proposing adding the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

"To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance."

*B. Purpose*

This record system enables the Centers for Disease Control and Prevention (CDC) officials to develop and evaluate existing health promotion programs for disease prevention and control, and to communicate new knowledge to the health community for the implementation of such programs.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Disclosure may be made to CDC contractors in the conduct of research studies covered by this system notice and in the preparation of scientific reports, in order to accomplish the stated purpose of the system. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

An individual may learn if a record exists about himself or herself by contacting the system manager at the above address. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents.

A parent or guardian who requests notification of, or access to a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in computer tapes/disks, CD ROMs, and file folders. The records in this System are retrieved by the name of individual, identification number; school name and year tested are some of the indices used to retrieve records from this system.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized Users*—Access is granted to only a limited number of researchers and designated support staff of CDC or

its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located directly next door to the Clifton Road facility. The computer room is protected by an automatic sprinkler system, numerous automatic sensors (e.g., water, heat, smoke, etc.) are installed, and a proper mix of portable fire extinguishers is located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fireproof safe. Security guard service in buildings provides personnel screening of visitors. Computer work stations and automated records are located in secured areas.

*Procedural Safeguards*—Protection for computerized records both on the mainframe and the National Center Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, encryption, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage for backup tapes. When Privacy Act tapes are scratched, a special process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the National Center LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records in this System are retained and disposed of in the following way: Records are retained and disposed of in accordance with the CDC Records Control Schedule. Records are maintained in agency for two years. Source documents for computer disposed of when no longer needed by program officials. Personal identifiers may be deleted from records when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP."

*OMB Control Number:* 09–20–0160.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33025 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Center for HIV, STD and TB Prevention (NCHSTP), Department of Health and Human Services (DHHS).

**ACTION:** Notification of proposed altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0161, "Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the National Center for HIV, STD and TB Prevention (NCHSTP).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless NCHSTP receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0161:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0161 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.

• Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** NCHSTP proposes to alter System of Records, No. 09–20–0161, "Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCHSTP." This record system enables the CDC officials to maintain training records and access the impact of the agency's training programs on the knowledge, attitudes and practices of clinicians and other health care personnel, in order to develop improved training curricula and programs for disease prevention and control for such health care personnel.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

National Center for HIV, STD and TB Prevention (NCHSTP)

**Records of Health Professionals in Disease Prevention and Control Training Programs**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0161, "Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCHSTP." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

This record system enables the CDC officials to maintain training records and access the impact of the agency's training programs on the knowledge, attitudes and practices of clinicians and other health care personnel, in order to develop improved training curricula and programs for disease prevention and control for such health care personnel.

**II. Authority for Maintenance of the System**

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The routine uses proposed for this System are compatible with the stated purpose of the System:

Disclosure may be made to CDC contractors in the conduct of training surveys and studies covered by this system notice and in the preparation of scientific reports, in order to accomplish the stated purposes of the system. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

CDC is under contract with private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are disclosed to such contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

The following information must be provided when requesting notification: (1) Full name; (2) name of the clinic organization in which requester was employed at time of training or survey participation; and (3) nature of the training or survey questionnaire in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in computer/disks, printouts and file folders. The records are retrieved by the name of individual respondent, identification number, and type of training received are some of the indices used to retrieve records from this system.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized Users*—Access is granted to only a limited number of personnel, i.e., CDC Project Officer, interviewers and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards*—Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

*Procedural Safeguards*—Protection for computerized records both on the mainframe and the CIO Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and Vault Management System for secure off-site storage is available for backup tapes. To avoid inadvertent data disclosure, "degaussing" is performed to ensure that all data are removed from Privacy Act computer tapes and/or other magnetic media. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employee who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; and Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records. Data maintained in CDC's Processing Center are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications. CIO LANs currently operate under Novell Netware v. 4.11 and are in compliance with "CDC & ATSDR Security Standards for Novell File Servers."

The records in this System are retained and disposed of in the following way: Records are maintained in agency for two years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process after 12 years, unless needed for further study.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCHSTP."

B. *OMB Control Number:* 09–20–0161.

C. *Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33026 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** National Center for Environmental Health (NCEH), Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), Department of Health and Human Services (DHHS).

**ACTION:** Notification of proposed altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0162, "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CCEHIP/NCEH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), National Center for Environmental Health (NCEH).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless CCEHIP/NCEH receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0162:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0162 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office

of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.

• Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** CCEHIP/NCEH proposes to alter System of Records, No. 09–20–0162, "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CCEHIP/NCEH." Records in this system are used to support studies to assess the health of Vietnam veterans relative to the health of other men of similar age. Specifically this information should enable the Centers for Disease Control and Prevention (CDC) to:

1. Evaluate the relationship of documented exposure to herbicides used in Vietnam (primarily Agent Orange) to possible adverse health consequences. Such possible effects to be evaluated include dermatologic, neurological, psychological, immunological, carcinogenic, reproductive, gastrointestinal, and others.

2. Assess the health effects of service in Vietnam (including factors other than herbicide exposure) as opposed to the experiences of veterans who served in other countries.

3. Evaluate the risk of selected cancers among Vietnam veterans in contrast to men of similar age who did not serve in Vietnam.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Coordinating Center for Environmental Health and Injury Prevention (CCEHIP)

**Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0162, "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CCEHIP/NCEH." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

Records in this system are used to support studies to assess the health of Vietnam veterans relative to the health of other men of similar age. Specifically this information should enable the Centers for Disease Control and Prevention (CDC) to:

1. Evaluate the relationship of documented exposure to herbicides used in Vietnam (primarily Agent Orange) to possible adverse health consequences. Such possible effects to be evaluated include dermatologic, neurological, psychological, immunological, carcinogenic, reproductive, gastrointestinal, and others.

2. Assess the health effects of service in Vietnam (including factors other than herbicide exposure) as opposed to the experiences of veterans who served in other countries.

3. Evaluate the risk of selected cancers among Vietnam veterans in contrast to men of similar age who did not serve in Vietnam.

Portions of records (*i.e.,* name, Social Security number or military service number, date of birth) may be disclosed to the National Center for Health Statistics, CDC for obtaining a determination of vital status. Death certificates stating the cause of death will then be obtained from the appropriate Federal, State, or local agency to enable CDC to evaluate whether excess mortality is occurring among Vietnam veterans.

**II. Authority for Maintenance of the System**

The Public Health Service Act, Section 301, Research and Investigations (42 U.S.C. 241); and the Public Health Service Act, Sections 304, 306, and 308(d), which discuss authority to maintain data and to provide assurances of confidentiality for health research and related activities (42 U.S.C. 242b, 242k, and 242m(d)).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Records have been disclosed to Department of Health and Human Services contractors to locate veterans, cancer cases and controls, conduct interviews, perform medical examinations, analyze pathology specimens, and similar medical services, so that the research purposes for which the records were collected could be accomplished. The contractor was required to comply with the Privacy Act and to follow Section 308(d) of the Public Health Service Act with respect to such records.

Portions of records (*i.e.,* name, Social Security number or military service number) have been disclosed to other Federal agencies such as the Veterans Administration, Internal Revenue Service, and Social Security Administration only to obtain information to aid in locating veterans involved in the study. These disclosures would have been made to update locating information provided by the Army and Joint Services Environmental Support Group.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to

respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

An individual may learn if a record exists about himself or herself by contacting the system manager at the above address. Persons who knowingly and willfully request or acquire a record pertaining to an individual under false pretenses are subject to a $5,000 fine for this criminal offense. Requesters in person must provide photo identification (such as driver's license) or other positive identification (*i.e.,* place of birth, *etc.*) that would authenticate the identity of the individual making the request. Individuals who do not appear in person must submit a notarized request to verify their identity. A guardian who requests notification of, or access to, a mentally incompetent or severely physically impaired person's record must provide a birth certificate (or notarized copy), court order, or other appropriate evidence of guardianship. An individual who requests notification of or access to, a medical record shall at the time the request is made, designate in writing a responsible representative (who may be a physician, other health professional, or other responsible individual) who will be willing to review the record and inform the subject individual of its contents.

In addition, the following information must be provided when requesting notification: (1) Full name and Social Security or military service number; and; (2) nature of the study in which the requester participated.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in hard copy records, microfilm, computer tapes/disks, CD–ROMs, and printouts. The records are retrieved by the name, Social Security number or military service number (when supplied voluntarily or contained in existing records used in studies under this system), or other identifying number.

Records in this system are collected under an assurance of confidentiality authorized by Section 308(d) of the Public Health Service Act. To comply with this assurance, the following special safeguards are necessary:

*Authorized Users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), as authorized by the system manager to accomplish the stated purpose for which the data in this system have been collected.

*Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. The local fire department is located directly next door to the Clifton Road facility. The computer room is protected by an automatic sprinkler system, numerous automatic sensors (*e.g.,* water, heat, smoke, *etc.*) are installed, and a proper mix of portable fire extinguishers is located throughout the computer room. Hard copy records are kept in locked cabinets in locked rooms. Security guard service in buildings provides personnel screening of visitors.

*Procedural Safeguards:* Protection for computerized records on the mainframe includes programmed verification of valid user identification code and password prior to logging on to the system; mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup tapes. To avoid inadvertent data disclosure, when erasing computer tapes and/or other magnetic media, an additional procedure is performed to ensure that all Privacy Act data are removed. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

Access to highly sensitive systems is limited to users obtaining prior supervisory approval. Names and other details necessary to identify individuals are not included in data files used for analysis. These files are indexed by code numbers which are linked with complete identifiers only if there is a specific need. Keys which link identification numbers to names are stored separately with access limited to CDC project officers and authorized staff.

CDC employees who process the records are instructed in specific rules of conduct to protect the security and confidentiality of records in accordance with Section 308(d) of the Public Health Service Act.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The records are retained and disposed of in accordance with the CDC Records Control Schedule, which allows the system manager to maintain the records for 20 years unless needed for future reference. Because five-year mortality updates are planned until the study population expires, and health information from the questionnaire will be correlated with the mortality data, the computerized records to which questionnaire data were converted may be kept as long as research needs dictate. Records have been transferred to the Federal Records Center for storage and will be retained there subject to statutory confidentiality requirements.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CCEHIP/NCEH."

*OMB Control Number:* 09–20–0162.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33027 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Select Agents and Toxins (DSAT), Coordinating Office for Terrorism Preparedness and Emergency Response (COTPER), Department of Health and Human Services (DHHS).

**ACTION:** Notification of proposed altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0170, National Select Agent Registry (NSAR)/Select Agent Transfer and Entity Registration Information System (SATERIS), HHS/CDC/COTPER". HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Coordinating Office for Terrorism Preparedness and Emergency Response (COTPER), Division of Select Agents and Toxins (DSAT).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless COTPER/DSAT receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0170:

- *Federal eRulemaking Portal: http://regulations.gov*. Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0170 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** COTPER/DSAT proposes to alter System of Records, No. 09–20–0170, "National Select Agent Registry (NSAR)/Select Agent Transfer and Entity Registration Information System (SATERIS), HHS/CDC/COTPER". Records maintained in the National Select Agent Registry (NSAR)—a joint DSAT and U.S. Department of Agriculture/Animal and Plant Health Inspection Service (APHIS) information management system—are accessed by DSAT through the Select Agent Transfer and Entity Registration Information System (SATERIS) which is an user interface for data entry, data query, and routine reporting activities. The purpose of this system of records is to limit access to those select agents listed in 42 CFR Part 73, 9 CFR Part 121, and 7 CFR Part 331 to those individuals who have a legitimate need to handle or use such select agents, and who are not identified as a restricted person by the U.S. Attorney General. The NSAR is also used to track the possession, use, and transfer of select agents and is a single Web-based system shared by DSAT and APHIS.

DSAT conducts regulatory oversight of individuals and entities that possess, use, or transfer select agents. This includes the review of registration applications, conducting inspections of registered facilities or facilities requesting registration, processing requests to import select agents, processing all reports and requests received from individuals or entities regarding a select agent, and maintaining this information pertaining to individuals and entities that possess, use, and/or transfer select agents.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Coordinating Office for Terrorism Preparedness and Emergency Response (COTPER)

**National Select Agent Registry (NSAR)/Select Agent Transfer and Entity Registration Information System (SATERIS)**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0170," National Select Agent Registry (NSAR)/Select Agent Transfer and Entity Registration Information System (SATERIS), HHS/CDC/COTPER". HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

Records maintained in the National Select Agent Registry (NSAR)—a joint DSAT and U.S. Department of Agriculture/Animal and Plant Health Inspection Service (APHIS) information management system—are accessed by DSAT through the Select Agent Transfer and Entity Registration Information System (SATERIS) which is an user interface for data entry, data query, and routine reporting activities. The purpose of this system of records is to limit access to those select agents listed in 42 CFR Part 73, 9 CFR Part 121, and 7 CFR Part 331 to those individuals who have a legitimate need to handle or use such select agents, and who are not identified

as a restricted person by the U.S. Attorney General. The NSAR is also used to track the possession, use, and transfer of select agents and is a single Web-based system shared by DSAT and APHIS.

DSAT conducts regulatory oversight of individuals and entities that possess, use, or transfer select agents. This includes the review of registration applications, conducting inspections of registered facilities or facilities requesting registration, processing requests to import select agents, processing all reports and requests received from individuals or entities regarding a select agent, and maintaining this information pertaining to individuals and entities that possess, use, and/or transfer select agents.

**II. Authority for Maintenance of the System**

Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and the Agricultural Bioterrorism Protection Act of 2002 (Pub. L. 107–188).

**III. Proposed Routine Use Disclosures of Data in the System**

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". The routine uses proposed for this System are compatible with the stated purpose of the System:

Records may be disclosed to contractors to handle program work overflow duties, performing many of the same functions (listed in the Purpose section above) as DSAT employees. Contractors are required to maintain Privacy Act safeguards with respect to such records.

Records may be disclosed to health departments and other public health or cooperating medical authorities to deal more effectively with outbreaks and conditions of public health significance.

Personal information from this system may be disclosed as a routine use to assist the recipient Federal agency in making a determination concerning an individual's trustworthiness to access select agents; to any Federal or State agency where the purpose in making the disclosure is to prevent access to select agents for use in domestic or international terrorism or for any criminal purpose; or to any Federal or State agency to protect the public health and safety with regard to the possession, use, or transfer of select agents.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

An individual may learn if a record exists about himself or herself by contacting the system manager at the above address. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must submit a notarized request on institutional letterhead to verify their identity. The knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine and/or imprisonment.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored by file folders, computer tapes and disks, CD–ROMs. The records are retrieved by name or DOJ identifier number.

The following special safeguards are provided to protect the records from inadvertent disclosure:

*Authorized Users:* A database security package is implemented on CDC computers to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Individuals who have routine access to these records are limited to Select Agent Program staff (DSAT FTEs and contractors) who have responsibility for conducting regulatory oversight of individuals and entities that possess, use, or transfer select agents.

*Physical Safeguards:* Paper records are maintained in locked cabinets in locked rooms in a restricted access location that is controlled by a cardkey system, and security guard service provides personnel screening of visitors. Electronic data files are password protected and stored in a restricted access location. The computer room is protected by an automatic sprinkler system, numerous automatic sensors (*e.g.,* water, heat, smoke, *etc.*) are installed, and a proper mix of portable fire extinguishers is located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure location. Computer workstations, lockable personal computers, and automated records are located in secured areas.

*Procedural Safeguards:* Protection for computerized records includes programmed verification of valid user identification code and password prior to logging on to the system; mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup files.

Knowledge of individual tape passwords is required to access tapes, and access to the system is limited to users obtaining prior supervisory approval. To avoid inadvertent data disclosure, a special additional procedure is performed to ensure that all Privacy Act data are removed from computer tapes and/or other magnetic media. When possible, a backup copy of data is stored at an offsite location and a log kept of all changes to each file and all persons reviewing the file. Additional safeguards may also be built into the program by the system analyst

as warranted by the sensitivity of the data set.

The DSAT and contractor employees who maintain records are instructed in specific procedures to protect the security of records, and are to check with the system manager prior to making disclosure of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel.

Appropriate Privacy Act provisions are included in contracts and the CDC Project Director, contract officers, and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

The USDA/APHIS maintains similarly stringent safeguards that are discussed within that agency's Select Agent system of records notice.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the COTPER LAN are in compliance with OMB Circular A–130, Appendix III.

Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications.

The DSAT records and associated information are retained and dispositioned in accordance with DSAT records retention schedule, N1–442–06–1, pending approval by the National Archives and Records Administration. The DSAT records will be retained for 10 years in compliance with the records retention schedule requirements or until such time as no longer needed for litigation or other records purposes. Records will be transferred to a Federal Records Center for storage when no longer in active use. Final disposition of records stored offsite at the Federal Records Center will be accomplished by a controlled process requesting final disposition approval from the record owner prior to any destruction to ensure records are not needed for litigation or other records purposes. Hard copy records and Sensitive But Unclassified (SBU) information designated for local disposition will be placed in a locked container or designated secure storage area while awaiting destruction. All SBU data will be destroyed in a manner that precludes its reconstruction, such as shredding.

Electronic information will be deleted or overwritten using overwriting software that wipes the entire physical disk and not just the virtual disk. Overwriting is required for the destruction of all electronic SBU information.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "National Select Agent Registry (NSAR)/Select Agent Transfer and Entity Registration Information System (SATERIS), HHS/CDC/COTPER."

*OMB Control Number:* 09–20–0170.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33028 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Privacy Act of 1974; Report of Modified or Altered System of Records

**AGENCY:** Division of Global Migration and Quarantine, National Center for the Preparedness, Detection, and Control of Infectious Disease (NCPDCID), Coordinating Center for Infectious Diseases (CCID), Department of Health and Human Services (DHHS).

**ACTION:** Notification of proposed altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09–20–0171, "Quarantine and Traveler Related Activities, including Records for Contract Tracing Investigation and Notification under 42 CFR Parts 70 and 71, HHS/CDC/CCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

These records will be maintained by the Coordinating Center for Infectious Diseases (CCID), Division of Global Migration and Quarantine, National Center for the Preparedness, Detection, and Control of Infectious Disease (NCPDCID).

**DATES:** Comments must be received on or before February 24, 2011. The proposed altered System of Records will be effective 40 days from the date submitted to the OMB, unless CCID receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the Privacy Act System of Record Number 09–20–0171:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Include PA SOR number 09–20–0171 in the subject line of the message.
- *Phone:* 770/488–8660 (not a toll-free number).
- *Fax:* 770/488–8659.
- *Mail:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- *Hand Delivery/Courier:* HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Chamblee, GA 30341.
- Comments received will be available for inspection and copying at this same address from 9 a.m. to 3 p.m., Monday through Friday, Federal holidays excepted.

**SUPPLEMENTARY INFORMATION:** CCID proposes to alter System of Records, No. 09–20–0171, "Quarantine and Traveler Related Activities, including Records for Contract Tracing Investigation and Notification under 42 CFR Parts 70 and 71, HHS/CDC/CCID". This system maintains records on the conduct of activities (*e.g.,* quarantine, isolation) that fulfill HHS's and CDC's statutory authority under sections 311, 361–368 of the Public Health Service Act to prevent the introduction, transmission and spread of communicable diseases.

This System of Record Notice is being altered to add the Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) memorandum dated May 22, 2007.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish

the notice after the System has become effective.

Dated: December 11, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 27, 2010.

**Department of Health and Human Services (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Coordinating Center for Infectious Diseases (CCID)

**Quarantine and Traveler Related Activities, Including Records for Contract Tracing Investigation and Notification Under 42 CFR Parts 70 and 71**

*Report of Modified or Altered System of Records*

**Narrative Statement**

**I. Background and Purpose of the System**

*A. Background*

The Department of Health and Human Services proposes to alter System of Records, No. 09–20–0171 "Quarantine and Traveler Related Activities, including Records for Contract Tracing Investigation and Notification under 42 CFR Parts 70 and 71, HHS/CDC/CCID." HHS is proposing to add the following Breach Response Routine Use Language to comply with the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and responding to the Breach of Personally Identifiable Information:

To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

*B. Purpose*

This system maintains records on the conduct of activities (*e.g.,* quarantine, isolation) that fulfill HHS's and CDC's statutory authority under sections 311, 361–368 of the Public Health Service Act to prevent the introduction, transmission and spread of communicable diseases.

Records are collected when individual known or suspected to have been exposed to serious communicable diseases arrives into the United States from foreign countries or is engaged in interstate or international movement These records are used to (1) document reports of illness that may pose a public health risk occurring while on board airplanes, maritime vessels, and at land-border crossings of persons arriving from foreign countries or traveling between States; (2) perform contact tracing investigations and notifications of passengers and crew when known or suspected exposures to serious communicable diseases occur on board a conveyance arriving in the United States from a foreign country or traveling from one State or possession to another; (3) inform international, Federal, State or local public health authorities so that these authorities may act to protect public health or safety; and (4) take such actions (*e.g.,* quarantine or isolation) as necessary to prevent the introduction, transmission, and spread of serious communicable diseases from persons arriving into the United States from foreign countries or persons engaged in interstate or international movement.

**II. Authority for Maintenance of the System**

Sections 311, 361–368 of the Public Health Service Act.

**III. Proposed Routine Use Disclosures of Data in the System**

This System of Records contains information on Individuals subject to quarantine or isolation orders, ill travelers (*i.e.,* passengers and crew), contacts of ill travelers, and/or individuals exposed or suspected of being exposed to serious communicable diseases.

Passenger and crew manifests from conveyances carrying individuals subject to 42 CFR parts 70 and 71, case reports, illness response forms, medical assessments, medical records (including but not limited to clinical, hospital and laboratory data and data from other relevant tests), name, address, date of birth, and related information and documents collected for the purpose of carrying out agency responsibilities under sections 311 and 361–368 of the Public Health Services Act.

Records may be disclosed to contractors to handle program work duties, performing many of the same functions as FTEs within DGMQ in situations where additional staff is required. Contractors are required to maintain Privacy Act safeguards with respect to such records.

Records may be disclosed to State and local health departments and other cooperating medical and public health authorities and their counsel to more effectively deal with outbreaks and other significant public health conditions.

Personal information from this system may be disclosed as a routine use to appropriate conveyance personnel, Federal agencies, State and local health departments, Department of State and embassy personnel (U.S. and foreign), and health authorities in foreign countries for contact tracing investigations and notifications of possible exposures to serious communicable diseases in connection with travel.

Records may be disclosed to the Department of Homeland Security to restrict travel of persons who pose a public health risk and in the instance of suspected domestic or international terrorism.

Disclosure may be made to medical personnel providing evaluation and care for ill or exposed persons, including travelers.

Records may be disclosed to the World Health Organization in accordance with U.S. responsibilities as a signatory to the International Health Regulations or other international agreements.

Personal information may be disclosed to Federal, State, and local authorities for taking necessary actions to place someone under quarantine or isolation, for enforcement of other quarantine regulations, or to protect the public's health and safety. Records may be disclosed to cooperating State and local legal departments enforcing concurrent legal authority related to quarantine or isolation activities.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, foreign, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or

her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, disclosure may be made to the Department of Justice to enable that Department to present an effective defense.

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information disclosed is relevant and necessary for that assistance.

**IV. Effects of the Proposed System of Records on Individual Rights**

The routine uses proposed for this System are compatible with the stated purpose of the System:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address listed above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

**V. Safeguards**

The records in this System are stored in Electronic media and file folders for hard-copy records. The records are retrieved by name of the individual or other identifying particulars.

The records in this System have the following safeguards in place to maintain and protect the information as it relates to Authorized users, physical and procedural safeguards:

*Authorized Users:* A database security package is implemented on CDC's computer systems to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control and Prevention (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

*Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a cardkey system. Access to the computer room is controlled by a cardkey and security code (numeric keypad) system. Access to the data entry area is also controlled by a cardkey system. Guard service in buildings provides personnel screening of visitors. Local fire department is located directly next door to the Clifton Road facility. The computer room is protected by an automatic sprinkler system, numerous automatic sensors (*e.g.,* water, heat, smoke, *etc.*) are installed, and a proper mix of portable fire extinguishers is located throughout the computer room. Computer files are backed up on a routine basis. Hard-copy records are stored in locked cabinets at CDC headquarters and CDC Quarantine stations which are located in a secure area of the airport.

*Procedural Safeguards:* Protection for computerized records, both on the mainframe and the National Center Local Area Network (LAN), includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily back-up procedures, and secure off-site storage is available. To avoid inadvertent data disclosure, measures are taken to ensure that all data are removed from electronic media containing Privacy Act information. Additional safeguards may be built into the program by the system analyst, as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

*Implementation Guidelines:* The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, "Minimum Security Requirements for Federal Information and Information Systems." Data maintained on CDC's Mainframe and the National Centers' LANs are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications

The records in this System are retained and disposed of in the following way: The records in this System are retained and disposed of in the following way: Contact tracing records will be maintained in the agency until the contact investigation is complete or no longer than twelve months, in accordance with proposed retention schedules; remaining quarantine records would be maintained 10 or 20 years, based on the applicable CDC records control schedule. Disposal methods include wiping electronic media and macerating paper materials.

**VI. OMB Control Numbers, Expiration Dates, and Titles of Information Collection**

A. *Full Title:* "Quarantine and Traveler Related Activities, including Records for Contract Tracing Investigation and Notification under 42 CFR Parts 70 and 71, HHS/CDC/CCID".

*OMB Control Number:* 09–20–0171.

*Expiration Date:* TBD.

**VII. Supporting Documentation**

A. Preamble and Proposed Notice of System for publication in the **Federal Register**.

B. *Agency Rules:* None.

C. *Exemption Requested:* None.

D. *Computer Matching Report:* The new system does not require a matching report in accordance with the computer matching provisions of the Privacy Act.

[FR Doc. 2010–33029 Filed 1–24–11; 8:45 am]

**BILLING CODE 4163–18–P**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**S. 118/P.L. 111–372**
Section 202 Supportive Housing for the Elderly Act of 2010 (Jan. 4, 2011; 124 Stat. 4077)

**S. 841/P.L. 111–373**
Pedestrian Safety Enhancement Act of 2010 (Jan. 4, 2011; 124 Stat. 4086)

**S. 1481/P.L. 111–374**
Frank Melville Supportive Housing Investment Act of 2010 (Jan. 4, 2011; 124 Stat. 4089)

**S. 3036/P.L. 111–375**
National Alzheimer's Project Act (Jan. 4, 2011; 124 Stat. 4100)

**S. 3243/P.L. 111–376**
Anti-Border Corruption Act of 2010 (Jan. 4, 2011; 124 Stat. 4104)

**S. 3447/P.L. 111–377**
Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (Jan. 4, 2011; 124 Stat. 4106)

**S. 3481/P.L. 111–378**
To amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution. (Jan. 4, 2011; 124 Stat. 4128)

**S. 3592/P.L. 111–379**
To designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the ''First Lieutenant Robert Wilson Collins Post Office Building''. (Jan. 4, 2011; 124 Stat. 4130)

**S. 3874/P.L. 111–380**
Reduction of Lead in Drinking Water Act (Jan. 4, 2011; 124 Stat. 4131)

**S. 3903/P.L. 111–381**
To authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo. (Jan. 4, 2011; 124 Stat. 4133)

**S. 4036/P.L. 111–382**
To clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury. (Jan. 4, 2011; 124 Stat. 4134)

**Last List January 10, 2011**

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